Oct 16-1874 21-481 Field

affirmed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~987.~~ 176 26

LOUIS GROSHOLZ, C. GROSHOLZ, C. F. SAUTER, ET AL.,
APPELLANTS,

vs.

CAROLINE NEWMAN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED MAY 25, 1872.

Oct Term 1874

SUPREME COURT OF THE UNITED STATES.

No. 387.

LOUIS GROSHOLZ, C. GROSHOLZ, C. F. SAUTER, ET AL., APPELLANTS,

vs.

CAROLINE NEWMAN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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1 *Parties to bill.*

UNITED STATES OF AMERICA:

Circuit court of the United States, 5th circuit, in and for the western district of Texas, at Austin, sitting in chancery. January term, 1872.

Be it remembered, that at a term of the circuit court of the United States, begun and held at Austin, for the January term, A. D. 1872, sitting in chancery, among others, the following proceedings were had:

LOUIS GROSHOLZ, CHRISTIANA GROSHOLZ, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, and Wilhelmina Eggert, Reuben A. Harwick, and Amanda Harwick, Henry Stauffer, and Emeline B. Stauffer, J. D. Bietel, Charlotte Bietel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kaemeser, and Simon K. Gross, guardians of Emma Catharine Gross, who is a minor, Penrose F. Eisenbrown and Matilda Steinbacker, citizens of the State of Pennsylvania, and William Eisenbrown, a citizen of the State of Maryland, complainants and aplants,

versus

CAROLINE NEWMAN AND HER HUSBAND, A. B. Newman, in their own behalf and as guardians of James Wahrenberger, Mary Warenberger, and Josephine Wahrenberger, minors, under the age of twenty-one years and heirs-at-law of John Wahrenberger, deceased; John B. Coster, Frank Pressler, and Charles Weise, and James Baker, otherwise called James Kirchburg, defendants and appellees.

No. 53. Chancery.

2 *Entry rules.—Filing bill.*

Be it remembered that on the 16th day of May, A. 1870, came the complainants, by their solicitors, Rolands and Jackson, and filed their bill of complaint against the defendants in this cause, which is endorsed, to wit:

U. S. circuit court. Chancery. No. 53. Louis Grosholz and others vs. Caroline Newman and others. Bill and exhibits. Filed May 16, 1870. M. Hopkins, clerk.

And thereupon the following entry appears upon the rule-book:

May rules. May 16, 1870.

LOUIS GROSHOLZ & OTHERS
vs.
CAROLINE NEWMAN AND HER HUSBAND, A. B. Newman, in their own behalf and as guardians of James, Mary, & Josephine Wahrenberger, minors and heirs-at-law of John Wahrenberger, dec'd, John B. Costa, Frank Pressler, and Charles Weise, all of Travis County, Texas, and James Baker, otherwise called James Kirchburg.

No. 53. Chancery.

Now come the complainants, by their solicitors, Rolands & Jackson, and file their bill of complaint in chancery against said defendants.
May 16, 1870.

ROLANDS & JACKSON,
Sol's for Compl'ts.

Test: M. HOPKINS, *Clerk.*

3 And which said bill is endorsed, to wit:
No. 53. U. S. circuit court. Chancery. Louis Grosholz and others vs. Caroline Newman and others. Bill and exhibits. Filed May 16th, 1870. M. Hopkins, clerk. Rolands & Jackson, sol's for compl'ts.
And is in words, to wit:

Bill.

Filed May 16, 1870.

M. HOPKINS, *Clerk.*

To the judges of the circuit court of the United States for the western district of Texas, sitting in equity at Austin:

Louis Grosholz, Christiana Grosholz, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, and Wilhelmina Eggert, who are citizens of the State of Pennsylvania, residing in the city of Philadelphia, Reuben A. Harwick, and Amanda Harwick, Henry Stauffer, and Emiline B. Stauffer, J. D. Beitel, Charlotte Beitel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Cha's B. Wolf, Elizabeth A. Kaemerer, and Simon K. Gross, guardian of Emma Catherine Gross, who is a minor, citizens of the State of Pennsylvania, residing in Lehigh County; Penrose F. Eisenbrown and Matilda Steinbacher, citizens of the State of Pennsylvania, residing at Pottsville, in the county of Schuylkill, and W'm Eisenbrown, a citizen of the State of Maryland, residing in the county of Carroll, bring this their bill against Caroline Newman and her husband, A. B. Newman, in their own behalf and as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, minors, under the age of twenty-one years and heirs-at-law of John Wahrenberger, deceased; John B. Costa, Frank Pressler,
4 and Charles Weise, all of whom are citizens of the State of Texas, residing in the county of Travis, and also against James Baker, (otherwise called James Kirshberg,) in case he comes within the jurisdiction of this court, he being a non-resident of the said State of Texas.

1. And thereupon your orators complain and say: That heretofore, and on or about the day of , A. D. 1838 or 1839, at the city of Philadelphia, in the State of Pennsylvania, one Catherine Kirchberg,

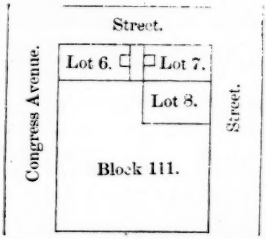
whose maiden name was Catherine Wolf, and whose first husband (long since deceased,) was named Blaess, was lawfully married to one Gustavus Kirchberg, and your orators by descent and inheritance from the said Catherine derive title as hereinafter shown to the premises hereinafter described; that the said Gustavus and Catherine Kirchberg, from and after their said marriage lived and cohabited together as husband and wife in the said city of Philadelphia, until some time in or about the year 1849; that, in or about the year last mentioned, the said Gustavus and Catherine Kirchberg removed and emigrated from the said city of Philadelphia, State of Pennsylvania, to the said State of Texas, and settled in the city of Austin and county of Travis aforesaid, and, thenceforward, there continued to live and cohabit together as husband and wife until the death of the said Gustavus, who departed this life, intestate, at the said city of Austin, on or about the day of , A. D. 1861.

2. That the said Gustavus and Catherine Kirchberg never had
5 any child or children, and, by force and effect of the statutes of the State of Texas, all of the common property belonging to them as husband and wife enured to and became vested in the said Catherine upon the death of the said Gustavus, her husband.

That, shortly after the death of the said Gustavus Kirchberg, and on or about the day of , A. D. 1862, the said Catherine Kirchberg also departed this life at the said city of Austin, leaving neither father nor mother, and having never taken another husband, nor had any issue of her body; that the several parties heretofore named as the pl'ffs in this bill are the next of kin and heirs-at-law and distributees of the said Catherine Kirchberg, deceased, except such of them as are made plaintiffs by reason of having married some of the female plaintiffs; and, for greater certainty, it is now stated that the parties thus joined as plaintiffs in this suit are your orators, Louis Grosholz, Charles F. Sauter, Charles H. Eggert, Reuben A. Harwick, Henry Stauffer, and J. D. Beitel, whose respective wives are heirs-at-law and distributees, as aforesaid, of the said Catherine Kirchberg, deceased; that besides your orators, one William Hoffman, if living, is an heir-at-law and distributee of the said Catherine Kirchberg, deceased, he being the son and only child of her deceased sister, Wilhelmina Hoffman, but for more than two years past your orators have been unable to obtain any information from or respecting him, and they verily believe him to be dead, and that your orators, being his next of kin and heirs-at-law and
6 distributees of any estate he may have left; that there are no other persons of the next of kin to said Catherine Kirchberg, or entitled to any inheritance from her; and that she, the said Catherine, left no last will or testament, but died intestate, and without having made any manner of disposition of the property hereinafter described, as the subject-matter of this suit.

3. That on or about the 16th day of December, A. D. 1850, at a Government sale of Austin city lots, in Travis County, State of Texas, aforesaid, the said Gustavus Kirchberg became the purchaser of lots number seven and eight, (7 & 8,) in block number one hundred and eleven, according to the plan of said city of Austin, and having paid the purchase-money for the same, his purchase thereof was duly entered in his name upon the records and map of the general land-office of the said State of Texas; that under the laws of the said State of Texas, the said lots, by means of the said purchase, became the common property of the said Gustavus and Catherine Kirchberg

as husband and wife; and your orators allege the fact to be that they remained and continued to be their common property thenceforward until by the death of the said Gustavus as aforesaid they vested in the said Catherine alone; that at the date of their said purchase of said lots 7 and 8, the said Gustavus and Catherine re-
sided on lot number 6 in the same block and had their dwell-
7 ing-house on the extrême back or rear edge of said lot 6, so that only an alley-way, 20 feet wide, intervened between their dwelling-house and the rear or back-end of the said lot 7, in the manner shown by sketch, viz:



That previous to the purchase of said lots 7 and 8, the said Gustavus and Catherine had no kitchen or other tenement upon said lot 6 or elsewhere, excepting their dwelling as aforesaid; and the purchase and acquisition of said lots 7 and 8 were made with the intention and for the express purpose of designating and using them as parts of the homestead of them, the said Gustavus and Catherine; that very soon after the purchase of said lots 7 & 8, the said Gustavus and Catherine erected upon the extreme rear end of lot 7 their kitchen, which was thereby placed just in rear of their said dwelling, and with nothing but the said alley-way, 20 feet wide, intervening between them; and very soon thereafter the said Gustavus erected upon the said lot number 8, immediately adjoining said lot 7, a brewery, or house, for the making and selling of beer, which business he thenceforward and for a long time thus conducted on said premises; that the entire value of all three of said
lots, number 6, 7, and 8, when thus acquired and designated, or
8 used as the homestead of said Gustavus and Catherine, did not exceed or amount to the sum of two thousand dollars.

And your orators allege the fact to be that the said lots 7 and 8, from the time they were so purchased as aforesaid, were part and parcel of the homestead of the said Gustavus and Catherine Kirchberg, and so continued to be part and parcel thereof during the remainder of their lives, and of the life of said Catherine, the survivor, down to her death in the year 1862. And so being part and parcel of their homestead, the same were not, nor was either or any part of them, subject, under the laws of the said State of Texas, to be alienated, conveyed, or in any manner encumbered by the said Gustavus alone, without the concurrence of his wife, the said Catherine, in the manner prescribed by law.

4. That notwithstanding the fact that said lots 7 and 8 became and remained part of the homestead of the said Gustavus and Catherine Küchberg, as already shown, the said Gustavus, as your orators are informed and believe, did, for some purpose or inducement to them unknown, on or about the 28th day of November, A. D. 1851, assume and undertake, by his separate deed of that date, to convey the said lots to the said John Wahrenberger, deceased; and on said last-mentioned day

did, without the concurrence of the said Catherine, execute to said John Wahrenberger his absolute deed, purporting to convey to him, said Wahrenberger, the title in fee-simple to the said lots 7 and 8. That the said deed was duly acknowledged by said Gustavus on the said
9 28th day of November, A. D. 1851, and was recorded in the county clerk's office of said county of Travis on the 19th day of September, 1854; and your orators herewith file, as "Exhibit A," a duly certified copy thereof, and pray that the same may be taken and considered as a part of this bill. Your orators state that although the said deed was and is, for the reasons given already, entirely void and of no effect as a conveyance of any title or interest in or to the said lots 7 & 8, yet it created and still constitutes a cloud upon their title thereto, and greatly embarrasses and obstructs your orators in the assertion of their right to said lots, as will be made more apparent by the facts hereinafter stated.

Your orators further state, that long after the making of the said deed, "Exhibit A," to wit, on or about the 24th day of June, A. D. 1856, the said John Wahrenberger obtained and procured another conveyance of the said lots 7 and 8, which conveyance was executed not only by *by* the said Gustavus Kirchberg, but also by the said Catherine, his wife, and which conveyance was a deed of trust to John B. Costa as trustee for said John Wahrenberger, for the sum of four hundred and thirty-five dollars, or thereabouts, for which the said Gustavus and Catherine executed their note of the same date, due three months thereafter. This conveyance was duly acknowledged for record upon the 25th of June, 1856, and was recorded in the office of the clerk of the county court of Travis County on the 2nd of July, 1856, and a
10 certified copy, marked "Exhibit B," is herewith filed, and prayed to be taken as part of this bill. And further, your orators state that nearly four years after the making of said deed of trust, "Exhibit B," to wit, on or about the 1st day of March, A. D. 1860, the said John Wahrenberger procured from the said Gustavus and Catherine Kirchberg another conveyance for the said lots 7 and 8, which conveyance was also a deed of trust to the said John B. Costa as trustee for said Wahrenberger, and was made, as is manifest upon its face, as a security for the payment of a promissory note for $496.50, executed on the same day by said Gustavus and Catherine to the said Wahrenberger, and which note was payable twelve months after the date thereof. This last-mentioned deed of trust conveyed not only the said lots 7 and 8, but also the other lot comprised in the homestead of said Gustavus and Catherine, to wit, lot 6 in the same block, which is not involved in this suit. And this last-mentioned deed of trust was acknowledged for record by said Gustavus and Catherine on the said 1st day of March, A. D. 1860, and was duly recorded on the next day in the county clerk's office of said county of Travis, and a certified copy thereof, marked "Exhibit C," is herewith filed and prayed to be taken and considered as part of this bill; that, by inspection of the said deeds of trust,
11 (Exhibits B & C,) it will be seen that the said Gustavus and Catherine Kirchberg covenanted to warrant the title of the lots thereby conveyed to said Costa as trustee for said Wahrenberger and to his assigns.

Your orators further state, that the said John B. Costa accepted the deeds of trust aforesaid, and trusts thereby created, at the special request and solicitation of the said John Wahrenberger, and for his benefit; that no sale, or attempted sale of any of said lots was ever made by said Costa, or by any one else, in pursuance of the said deeds of

trust. But your orators, on their information and belief, state the fact to be that, after the making of the said deeds of trust, any and all indebtedness of the said Gustavus and Catherine Kirchberg to the said Wahrenberger, was fully paid off, discharged, and extinguished, by means whereof the said deeds of trust were in equity released, and that a release or reconveyance should have been executed by the said John B. Costa as trustee as aforesaid. But your orators state that no release or reconveyance has ever been made by the said Costa, but the said deeds of trust, (Exhibits B & C,) still remain of record without any entry of satisfaction, and constitute serious clouds and embarrassments upon the title of your orators. Your orators, however, state and insist that by the said deeds of trust, and the facts connected therewith and herein stated, it clearly appears that the said John Wahrenberger, for many years after the making to him of the absolute
12 deed, (Exhibit A,) and notwithstanding the said deed, Exhibit A, fully recognized and acknowledged, the absolute right and title of the said Gustavus and Catherine Kirchberg, in the said lots 7 and 8, that he dealt with them concerning the said lots, receiving for his benefit the said deeds of trust, so executed to said Costa as his trustee; and that he and his heirs and assigns were and are thereby estopped from claiming, or setting up any right or title under or by virtue of the said deed, Exhibit A. And your orators state that during all the time which elapsed from their first acquisition of said lots 7 and 8, on the 16th day of December, A. D. 1850, down to the death of said Catherine Kirchberg, on or about the day of , 1862, the said lots 7 & 8 were in the actual use, occupation, and enjoyment of the said Gustavus and Catherine so long as they both lived, as part and parcel of their homestead, and after the death of said Gustavus, they continued in the use, occupation, and enjoyment of the said Catherine until her death, as part and parcel of her homestead; that during all this time, and for more than ten years after the date of Exhibit A, the said Gustavus and Catherine Kirchberg, so held, occupied, possessed, and enjoyed the said lots 7 and 8, as of their own absolute right and property, adversely to the said John Wahrenberger, notwithstanding the said absolute deed, Exhibit A, and adversely to all others; that their
13 occupation, enjoyment and claim as aforesaid of and to the said lots 7 and 8, was open and notorious during all of said time, and was well known to the said John Wahrenberger during all of said time, and was never, by him or any one else, disturbed or denied. And so your orators state, that if ever there was any validity in the said absolute deed, Exhibit A, or any title or interest by it ever conveyed by said Gustavus Kirchberg to said John Wahrenberger such title or interest was precluded, barred, and divested by the adverse occupation, possession and claim as aforesaid of the said Gustavus and Catherine Kirchberg, and by the force and effect of the statutes of the State of Texas, in this behalf enacted, and all the right, title and interest of and to the said lots was thereby revested in them, the said Gustavus and Catherine Kirchberg, as against the said John Wahrenberger, or any one claiming under him.

5. Further complaining your orators state that, notwithstanding the title and possession of said lots 7 and 8 by the said Gustavus and Catherine Kirchberg so long as they or either of them lived, and notwithstanding the fact that, upon the death of the said Catherine as before stated, the said lots 7 and 8 descended to and became the property of your orators, as the next of kin and heirs of said Catherine, yet the said John Wahrenberger, in disregard of the rights of your orators, and

fraudulently conspiring and confederating with other parties here-
14 inafter named, to deprive your orators of their rights and property did, after the death of the said Gustavus and Catherine Kirchberg, and on or about the 4th day of March, A. D. 1864, make and deliver to a person calling himself James Kirchberg, but whose real name is James Baker, a deed for the said lot 8, in said block 111, though then it was well known both to the said John Wahrenberger and James Baker that the said Wahrenberger had no legal or equitable right or title in or to the said lot; that this deed purports upon its face to have been made in consideration of the sum of one dollar, which it is apparent was but a fictitious and nominal consideration, and which, if ever paid, was no real consideration for the said lot, which was then of the value of twelve hundred dollars, and is now worth twenty-five hundred dollars; that this deed was proved up for record on the 14th of May, 1864, and was recorded in the county clerk's office of Travis County aforesaid, on the 16th day of May, 1864. A copy of this deed is herewith filed as Exhibit D, and is prayed to be taken and considered as part of this bill; that afterwards, and on or about the 14th day of January, A. D. 1868, the said James Baker, so calling himself James Kirchberg, did, by deed of that date, attempt to convey to the defendant, Frank Pressler, the said lot 8, for an expressed consideration of four hundred dollars, a copy of which deed, marked Exhibit E, is herewith filed, and is prayed to be
15 taken as part of this bill. But your orators state that the said defendant, Pressler, at and long before the date of said deed, well knew the fact to be that the said James Baker, calling himself Kirchberg, had no right or title to the said lot 8; that he had actual and constructive notice that said James Baker had paid nothing for it, and that the deed from said John Wahrenberger to said James conveyed no title; that he, said Pressler, well knew that the said Gustavus and Catherine Kirchberg had claimed, occupied, and enjoyed the said lot down to and at the times of their deaths as their own property. And upon their information and belief, your orators further state that the said Pressler did not pay to said James Baker, calling himself James Kirchberg, the consideration in said Exhibit E mentioned, or any other fair or adequate consideration for the said lot; but well knowing that the deed of said James Baker was no conveyance of title in or to said lot, and desiring the same merely as color or pretence of title, he received and procured the same by confederation with the said James without any consideration in fact or for some very trival sum, for the purpose of defrauding and depriving your orators of their property in the said lot 8; that, although the said deed to said Pressler, from said James Baker, calling himself Kirchberg, contains a general warranty of title, yet such warranty is illusory and simply designed to deceive
16 by fair appearances, as the said James had no means or property whatever to make good a breach of said warranty, and the said Pressler well knew that such was his condition, and that said warranty was no security for the title; that soon after the making of the said deed, the said James left the said town of Austin and State of Texas, and went to parts unknown to your orators; has never returned therefrom. And your orators state that, under pretence of title to said lot 8, thus derived through his fraudulent collusion with the said James, and without having parted with any fair or valuable consideration for the said lot, the said defendant, Pressler, has, ever since the 14th day of January, A. D. 1868, wrongfully occupied the said lot, and taken rents, profits, and issues of the same, which have been worth at the rate of fifty dollars per month.

6. Further complaining, your orators state that the defendant, Caroline Newman, was the wife of the said John Wahrenberger, in his lifetime; that the said John departed this life some time early in the year 1864, and the defendant, Caroline, afterwards intermarried with the said A. B. Newman; that after the death of the said John Wahrenberger and before the marriage of the said Caroline with the said A. B. Newman, to wit, on or about the 31st day of December, A. D. 1868, she, the said Caroline, though well knowing that she had no right, title, or interest in or to the said lot 7, in said block 111, and designing
17 to defraud your orators of their right and title to the same, fraudulently conspired and confederated with the defendant, Charles Weise, and in pursuance of such design she, on or about the said 31st of December, 1868, made and delivered to the said Charles Weise a deed in fee-simple for the said lot 7, with covenant of general warranty. The said deed was acknowledged for record on the day of its execution, and was recorded in the county clerk's office of Travis County aforesaid, on the 5th day of March, 1869, as is apparent from inspection of said deed, of which a certified copy, marked Exhibit F, is herewith filed and prayed to be taken as a part of this bill; that the said deed recites a cash consideration of three hundred and fifty dollars in specie; but your orators do not admit, but on their information and belief deny, that such a consideration or any valuable or adequate consideration was paid by said Weise to the said Caroline for the said lot. On the contrary thereof, your orators are informed and believe, and so state, that this pretended sale and conveyance was a sham and fictitious transaction between the said Caroline and the said Weise, and a mere fraudulent device to deprive your orators of their right and title in the said lot 7. And your orators state that ever since the said 31st day of December, 1868, the said defendant, Weise, has, under color and
18 pretence of said deed, had and held possession and use of the said lot 7, and has taken and received to his own use the rents, issues, and profits of the same, which have been worth at the rate of ten dollars per month; that the actual value of said lot 7 at the date of said deed, Exhibit F, was six hundred dollars, and its present value at least one thousand dollars; that however the fact may be as to the payment or non-payment by said Weise to the said Caroline of any consideration for said lot 7, yet the said Weise, at and before the date of the same, had notice that the rightful title and ownership of the said lot was in the heirs of the said Catheine Kirchberg, and not in the said Caroline; that he well knew the fact that for many years before the death of said Catherine, she and her husband, the said Gustavus Kirchberg, had claimed, occupied, used, and enjoyed the said lot 7 as a part and parcel of their property and of their homestead. Whereof your orators state that the defendant Weise did not, by means of said deed, Exhibit F, take or obtain any title or interest, either legal or equitable, in the said lot 7.

7. Your orators further state and show to your honors that, notwithstanding said several deeds and conveyances hereinbefore referred to as Exhibits A, B, C, D, E, and F, and each and all of them of no validity, either at law or in equity, to divest your orators of their title to
19 and ownership of the said lots 7 and 8, in said block 111, yet, nevertheless, the same have been and still are clouds upon their title to the same, and very serious obstacles and embarrassments to their recovery and enjoyment of the said lots; that under pretence of the said deeds, or of some of them, the said defendants, Frank Pressler and Charles Weise, wrongfully withhold from your orators the pos-

session and enjoyment of said lots, and take and convert to their own use the rents, issues, and profits of the same; that the defendant, Caroline Newman, pretending to have had, by virtue of said deeds, Exhibits A, B, and C, and through her former husband, the said John Wahrenberger, some right to or title in the said lots, refuses to account or pay over to your orators any of the proceeds, rents, issues, or profits of the said lots, although besides any pretended purchase-money she may have received from said Weise for said lot 7, she also has received and converted to her own use the rents and profits of said lot 7 for the years 1864, 1865, 1866, 1867, & 1868, which were of the annual value of one hundred dollars.

That the said Caroline was administratrix of the estate of the said John Wahrenberger, deceased, and also one of the heirs and distributees of his estate, and, as such, derived and inherited a large amount of real estate as well as personal property and monies. That the said Caroline and her present husband, the defendant A. B. Newman, are the guardians of the minor defendants, James, Mary, and
20 Josephine Wahrenberger, infant heirs at law of the said John Wahrenberger, which infant heirs have derived and inherited from the estate of the said John a large amount of real estate and personal property; yet the said Caroline and A. B. Newman have not, nor has either of them, either in their own behalf or as guardians as aforesaid, ever accounted to or paid over to your orators the value of said lot 8, so conveyed as aforesaid, by said John Wahrenberger in his life-time to the said James Baker, calling himself Kirchberg, nor any of the rents, profits, or issues, thereof received and converted to his own use by the said John Wahrenberger in his life-time, for the use and occupation of his said lot 8, during the years 1862, 1863, and part of 1864, which rents, issues, and profits were of the annual value of three hundred dollars; that the said James Baker, calling himself Kirchberg, has never, in any manner accounted to or settled with your orators for the value of said lot 8, by him conveyed as aforesaid to the said Pressler; that the defendant John B. Costa, trustee, as aforesaid, in the said deeds, Exhibits B and C, did not in the life-time of the said Gustavus and Catherine Kirchberg, reconvey or release to them or either of them the title or interest which he took in said lots 7 and 8, by virtue of said deeds; nor has he since the death of said Gustavus and Catherine, ever so released or reconveyed to your orators, although all indebtedness from said Gustavus and Catherine to said John Wahrenberger has long since
21 been fully paid off, and the said deeds in trust, Exhibits B & C, thereby fully satisfied.

8. Your orators further state and show to your honors that at the time they inherited from said Catherine Kirchberg the said lots 7 and 8 the late rebellion was being waged by the so-called Confederate States, and the State of Texas was one of them, against the United States; that in consequence thereof, your orators being citizens and residents of the loyal States, as hereinbefore set forth, were unable to take possession of said lots 7 and 8, or otherwise to look after and protect their rights and interests in the same until after the close of the said rebellion; that after the death of the said Gustavus and Catherine Kirchberg, the said John Wahrenberger took and obtained letters of administration upon their estates, and, upon the death of the said John, the defendant Caroline became administratrix of the same, de bonis non; by means whereof the said John and Caroline obtained possession, in their fiduciary capacities, of the said lots, and were thereby the better enabled to control and dispose of the same in the fraudulent manner already set out.

The administration of the estates of the said Gustavus and Catherine has been closed in the county court of Travis County aforesaid; that after the close of the late rebellion your orators, by means of correspondence, and through their attorneys, sought with diligence to acquire information as to their rights and interests in the estate of the
22 said Catherine Kirchberg, deceased, and, upon discovering their rights in and to the said lots 7 and 8 they sent out a patent for the same from the general land-office of the State of Texas, which patent issued, under the rules governing said office, to the heirs of said Gustavus Kirchberg, and is herewith filed as Exhibit G, and is prayed to be taken and considered as a part of this bill.

Your orators state that, under the laws of the State of Texas, the said patent, though issued as aforesaid to the heirs of Gustavus Kirchberg, yet enures to them, your orators, by reason and virtue of their inheritance from the said Catherine, who derived title to said lots as is hereinbefore set out; that your orators, diligently pursuing their rights, and relying on the said patent and their title as already set out, did, on the 12th day of February, 1869, bring their suit of trespass to try title for the recovery of said lots, on the law side of this court, against the said Frank Pressler and Charles Weise, who is called Weiser, in said suit at law; that the said action of trespass to try title came to trial in this court on the law side, on or about the 24th day of June, 1869, and the defendants therein introduced in evidence and relied upon the said absolute deed, Exhibit A, from the said Gustavus Kirchberg to the said John Wahrenberger. Your orators, for the purpose of showing the invalidity of said deed, proposed to introduce as evidence, the said deeds of
23 trust, Exhibits B and C, but the court held that the same were not admissible as evidence in the suit at law, and the said deeds of trust were excluded; that under the evidence as allowed to go to the jury, and under the instructions of the court based thereon, there was a verdict in favor of the defendants and against your orators, and a judgment rendered thereon; but your orators are advised that the said verdict and judgment, having been rendered within less than one year before the bringing of this bill, would not bar or preclude them, even from now bringing another action of trespass to try title for said lots, much less, from bringing this, their suit in equity.

To the end, therefore, that the said defendant may, if they can, show why your orators should not have the relief hereby prayed for, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say—

1st. Whether the allegations contained in the stating part of this bill are true; and, if nay, how with truth the contrary is to be made out; how otherwise should each of the facts be stated; wherein, in each and every particular, is any or all of said allegations untrue.

24 The premises considered, your orators pray that an account may be taken as between them and each of the said defendants, of the rents, issues, and profits of the said lots 7 and 8, which have been received by the said defendants respectively, and by the said John Wahrenberger in his life-time, or which but for their wilful default or neglect might have been so received, and that your orators have a decree for the payment of the same by the defendants respectively, in the sums for which they may severally be found liable on account of such rents,

issues, and profits; that on the final hearing of this cause the defendants, Caroline and A. B. Newman, be required to produce and deliver up for cancellation the said absolute deed, Exhibit A; and that the same be, by direction of this court, cancelled, vacated, and forever held for naught. That the said defendant, John B. Costa, be required to produce and deliver up for cancellation the said deeds of trust, Exhibits B & C, or be required to make to your orators a conveyance or release of all title or interest to or in said lots 7 and 8, in him vested by said deeds of trust.

That by the decree of this court, the deeds, Exhibits D and E, under pretence of which the defendant, Frank Pressler, holds the said lot 8, be annulled and vacated as clouds upon the title of your orators to the said lot, and that said Pressler be enjoined to deliver possession of said lot 8, to your orators or their agents, and in case he shall not so do, that, by proper process of this court, the possession of the same be delivered to your orators, and the title and possession of your orators in and to said lot 8 be quieted as against the said defendant, Pressler.

That by the decree of this court the deed, Exhibit F, under pretence of which the defendant, Charles Weise, holds the said lot 7, be annulled and vacated as a cloud upon the title of your orators to the said lot 7, and the said defendant Weise be enjoined and commanded to deliver possession of the said lot to your orators or their agents; and in case he shall not so do, that, by proper process of this court, the possession of the same be delivered to your orators, in and to said lot 7 be quieted as against the said defendant, Weise. Or if, for any reason, your orators shall not be entitled to relief as against the defendant', Pressler and Weise, or either of them, then that y'r orators have a decree against the defendants, Caroline Newman and A. B. Newman, in their own right, and as guardians of the said minor heirs of said John Wahrenberger, deceased, for the money value of the said lots, one or both, as the case may be.

Or that your orators have such other or further or general relief as the nature and circumstances of this case may require, and to your honors shall seem meet.

26 May it please your honors to grant unto your orators a writ of subpœna, to be directed to the said Caroline Newman and her husband, A. B. Newman, as defendants in their own right and behalf, and also as guardians of the minors, James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, infant heirs of the said John Wahrenberger, deceased, to the said John B. Costa, to the said James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, infants under age and guardianship as aforesaid, and to the said Frank Pressler and Charles Weise; all of which several defendants are residents of the said county of Travis, and State of Texas, thereby commanding them, and each of them, at a certain time and under a certain penalty, therein to be limited, personally to appear before this honorable court, and then and there full, true, direct, and perfect answers to make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall seem meet.

And as in duty bound, your orators will ever pray, &c., &c.

ROBARDS AND JACKSON,
Solicitors for Complainant.

NOTE. All the defendants are required to answer the interrogatory number 1.

27 *Exhibit "A" to bill and filed therewith May* 16, 1870.—M. HOPKINS, *clerk.*

Exhibit "A." Copy of deed. Gustavus Kirchberg to John Wahrenberger. Filed May 16th, 1870. M. Hopkins, clerk.

Gustavus Kirchberg to John Wahrenberger.

Know all men by these presents that I, Gustavus Kirchberg, of the county of Travis, State of Texas, for and in consideration of the sum of one hundred and fifty dollars, to me in hand paid by John Wahrenberger, of said county and State, the receipt whereof is hereby acknowledged, have bargained and sold, and do by these presents bargain, sell, transfer, and convey unto the said John Wahrenberger, his heirs and assigns, the following described lots or parcels of land, to wit: Lots number seven and eight, (7 & 8,) in block number one hundred and eleven, in the city of Austin, together with all the privileges and appurtenances thereunto belonging, to have and to hold the said
28 lots or parcels of land unto the said John Wahrenberger, his heirs and assigns forever. *And I do hereby covenant to and with said John Wahrenberger, his heirs and assigns forever.* And I do hereby covenant to and with said Wahrenberger, his heirs and assigns, that I am lawfully seized of the above, described premises; that I have a good right to sell and dispose of the same, and that they are free from all encumbrances; and I hereby warrant the title thereto unto said Wahrenberger, his heirs and assigns against the lawful claims of all persons.

In witness whereof, I hereunto set my hand and scroll for seal at the city of Austin, this 28th day of November, A. D. 1851.

GUSTAVUS KIRCHBERG. [SEAL.]

In presence of—
I. HOUGH, JR.
B. H. H. BUTTS.

THE STATE OF TEXAS, *Travis County:*

Before me Joseph Lee, a notary public for said county, personally appeared Gustavus Kirchberg, and declared that he executed
29 the foregoing deed for the consideration and purposes therein set forth and described.

In testimony whereof I hereto set my hand and seal of office the 28th day of November, A. D. 1851.

JOSEPH LEE,
Notary Public, Travis County.

Filed for record Sept. 13th 1854, at 10 o'clock a. m. Recorded Sept. 19th, 1854, at 1 o'clock, p. m.

THE STATE OF TEXAS, *County of Travis:*

I, Aug. F. Otto, clerk of the county court of Travis County, Texas, hereby certify that the within and foregoing instrument of writing, is a true and correct copy of the original as it appears of record at my office in Book I, on pages 117 & 118, Travis County records.

In testimony whereof I hereunto set my hand, and affix the seal of the county court, at the city of Austin, this the 12th day of March, A. D. 1870.

[L. S.]

AUG. F. OTTO,
Clerk C. C., T. C., T.,
By F. W. SCHAFFUIT,
Deputy.

30 *Exhibit B to bill filed therewith May* 16, 1870.—M. HOPKINS, *clerk.*

Deed of trust. Gustavus Kirchberg and wife to John B. Costa. Filed May 16th 1870. M. Hopkins, clerk.

Gustavus Kirchberg & wife to John B. Costa.

This deed of trust, made and executed this the 24th day of June, A. D. 1856, witnesseth that Gustavus Kirchberg and his wife, Catherine Kirchberg, of the county of Travis, for the considerations hereafter set forth, and for the further consideration of one dollar to them paid, have bargained, sold, and conveyed, and by these presents do sell and convey to John B. Costa, of Travis County, all their right, title, and interest and to the following described lots of ground situate in the city of Austin, viz, lots No. (6) six, (7) seven, and (8) eight, in block number one hundred and eleven (111,) together with all and singular the improvements belonging to the same, to have and to hold the above-
31 described premises unto him, the said John B. Costa, his heirs and assigns forever; and we the said Gustavus Kirchberg and Catherine Kirchberg, do hereby warrant, and will forever defend, the title to said lots of ground unto him the said Costa, his heirs and assigns forever.

The above deed of trust is, however, made upon the following conditions and trusts, viz: Whereas the said Kirchberg and wife have this day executed to John Wahrenberger, their prommissory note for the sum of four hundred and thirty-five dollars, payable three months after date; and whereas the above deed is made to secure the payment of said note: Now, if the said Kirchberg and wife shall fail to pay and discharge said note when it becomes due, then the said John B. Costa is hereby authorized to sell said lots of ground to the highest bidder for cash, at the court-house door of Travis County, after first giving
32 thirty days' notice of the time, place, and terms of sale in the Texas State Gazette, a newspaper published in the city of Austin; and after discharging the amount due on said note and defraying the expenses of this trust, he shall pay over the residue of the purchase-money to the said Kirchberg or his wife, the said Catherine Kirchberg, and the said Costa, in the event of sale as aforesaid, is authorized hereby to make as full title as the said Kirchberg and wife could before the execution of this deed. But if the said Gustavus Kirchberg or his said wife shall pay said note and all sums which may due thereon, then the above deed to be cancelled and considered as null and void; otherwise to be and remain in full force according to the tenor and effect of this instrument.

In testimony whereof we do hereunto set our hands and seals this 24th day of June, A. D. 1856.

G. KIRCHBERG. [SEAL.]
CATHERINE KIRCHBERG. [SEAL.]

STATE OF TEXAS, *County of Travis:*

33 Before me, P. De Cordova, N. P. of Travis County, personally appeared Gustavus Kirchberg, to me well known, who acknowledged the execution of the within deed for all the uses and purposes and considerations therein contained; and at the same time came Catherine, the wife of said Gustavus Kirchberg, to me known, who being examined privily and apart from her said husband, and having this

instrument of writing explained to her, also acknowledged that she executed the same of her own free will and accord for all the purposes and considerations therein contained.

In testimony whereof I have hereunto set my hand and seal of office, at Austin, this 25th day of June, 1856.

[L. S.]

P. DE CORDOVA,
Notary Public, Travis County.

Filed for record this 2d day of July, A. D. 1856, at 7 o'clock, a. m., and recorded the same day at 11 o'clock a. m.

34 THE STATE OF TEXAS, *County of Travis:*

I, Aug. F. Otto, clerk of the county court of Travis County, do hereby certify that the within and foregoing instrument of writing, is a true and correct transcript of the record as it appears in my office, in Book K, on pages 619 & 620, Travis County records.

In testimony whereof I hereunto set my hand and affix the seal of the county court at Austin, this the 12th day of March A. D. 1870.

[SEAL.]

AUG. F. OTTO,
Clerk C. C., T. C., T.
By F. W. SCHAFFUIT, *Deputy.*

35 *Exhibit C to bill and therewith filed May* 16, 1870.—M. HOPKINS, *clerk.*

Exhibit C. Copy of deed of trust. G. Kirchberg and wife to John B. Costa. Filed May 16th, 1870. M. Hopkins, clerk.

G. Kirchberg and wife to John B. Costa.

This deed of trust, made and executed this the first day of March, A. D. 1860, witnesseth, that Gustavus Kirchberg and his wife, Catherine Kirchberg, of the county of Travis and State of Texas, for the consideration hereinafter set forth, and for the further consideration of one dollar to them paid, have bargained, sold, and conveyed, and do by these presents sell and convey to John B. Costa of said county and State, all their right, title, and interest in and the following described lots of ground situated in the City of Austin, viz, lots No. 6, (six,) 7, (seven,) and 8, (eight,) in block No. one hundred and eleven, (111,) together with all and singular the improvements belonging to the
36 same, to have and to hold the above-described premises unto him, the said John B. Costa, his heirs and assigns, forever; and we the said Gustavus Kirchberg and Catherine Kirchberg do hereby warrant and will forever defend the title to the said lots of ground unto him, the said Costa, his heirs and assigns, forever. The above deed of trust is, however, made upon the following conditions and trust, viz: Whereas the said Kirchberg and wife have this day executed to John Wahrenberger, their promissory note for the sum of four hundred and ninety-six dollars and fifty cents, payable twelve months after date; and whereas the above deed is made to secure the payment of said note: Now, if the said Kirchberg and wife shall fail to pay and discharge said note, when it becomes due, then the said John B. Costa is hereby authorized to sell said lots of ground to the highest bidder for cash, at the court-house door of Travis County, after first giving thirty days' notice of the time, place, and terms of sale in the Texas
37 State Gazette, a newspaper published in the city of Austin; and

after discharging the amount due on said note, and defraying the expenses of this trust, he shall pay over the remainder of the purchase-money to the said Kirchberg, or his wife, the said Catherine Kirchberg; and the said Costa, in the event of sale aforesaid, is hereby authorized to make as full title as the said Kirchberg and wife could before the execution of this deed. But if the said Gustavus Kirchberg or his said wife shall pay said note, and all sums which may be due thereon, then the above deed is to be cancelled and considered as null and void; otherwise to be and remain in full force according to the tenor and effect of the instrument. The above-mentioned note bears interest at the rate of twelve per cent. from date.

In testimony whereof we do hereunto set our hands and seals this the 1st day of March, 1860.

G. KIRCHBERG. [SEAL.]
CATHERINE KIRCHBERG. [SEAL.]

38 THE STATE OF TEXAS, *County of Travis:*

Before me, Thomas E. Sneed, notary public, in and for Travis County, on this day came and personally appeared Gustavus Kirchberg to me well known, who acknowledged the execution of the within deed of trust for all the purposes and considerations therein stated; and at the same time also came Catharine Kirchberg, the wife of the said Gustavus Kirchberg, to me well known, who being by me examined separate and apart from her said husband, and having the foregoing instruments of writing explained to her, she acknowledged that she had executed the same of her own free will and accord for all the purposes and considerations therein stated, and that she wished not to retract it.

In testimony whereof I hereto set my hand and the seal of my office at Austin, this the first day of March, A. D. 1860.

[SEAL.] THO'S E. SNEED,
Notary Public, Travis County, Texas.

39 Filed for record at ten o'clock a. m., on the 2nd day of March, A. D. 1860, and recorded March 15th, A. D. 1860, at 9 o'clock, a. m.

T. M. LAURIER, *Clerk.*

THE STATE OF TEXAS, *County of Travis:*

I, Aug. F. Otto, clerk of the county court of Travis County, Texas, hereby certify that the foregoing and within instrument of writing is a true and correct copy of the record as it appears of record in Book O, on pages 116, 117, and 118, Travis County records.

In testimony whereof I hereunto set my hand and affix the seal of the county court at Austin, this 14th day of March, A. D. 1870.

AUG. F. OTTO,
Clerk of C. C., T. C.; T.,
By F. W. SCHAFFUIT,
Deputy.

40 *Exhibit D to bill and therewith filed May* 16, 1870.—M. HOPKINS, *clk.*

Exhibit D. Copy of deed. John Wahrenberger to James Kirchberg. Filed May 16, 1870. M. Hopkins, clerk.

John Wahrenberger to James Kirchberg.

THE STATE OF TEXAS, *County of Travis:*

Know all men by these presents that I, John Wahrenburger, of said State and county, for and in consideration of the sum of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, have bargained, sold, released and conveyed, and do by these presents bargain, sell, release and convey unto James Kirchberg, of the same State and county of Travis, his heirs or assigns, a parcel of land known as lot number eight, (8,) in block number one hundred and eleven, (111,) with all the improvements thereon, situated in the city of Austin: To have and to hold the above-described lot or parcel of land with
41 all the rights, privileges and appurtenances thereunto appertaining, unto him, the said James Kirchberg, his heirs or assigns, forever, in fee simple. And I do hereby warrant unto the said James Kirchberg, his heirs or assigns, the title to said land, and will defend the same against the claim or claims of all and every person legally claiming or to claim the same.

In testimony whereof I hereunto set my hand on this the fourth day of March, one thousand eight hundred and sixty-four.

JOHN WAHRENBERGER.

Test: THOMAS JOHNSON.
J. H. JOHNSON.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, personally appeared Thomas Johnson, to me well known, who, being by me duly sworn, on oath, says that John Wahrenberger acknowledged to him that he had signed the within (on the reverse of this) instrument of writing for the purposes and considerations therein stated and that he, Johnson, had
42 signed the same as witness at the request of said Wahrenberger.

In testimony whereof I hereunto sign my name and affix the impress of my official seal at office in this city of Austin, this 14th day of May, A. D. 1864.

[L. S.]

J. MINER,
Clerk Co. Court, Travis Co., Texas.

THE STATE OF TEXAS, *County of Travis:*

I, Aug. F. Otto, clerk of the county court in and for the said State and county, hereby certify that the within and foregoing instrument of writing is a true and correct transcript taken of the original as it appears of record at my office in Book Q, on page 202, Travis County records.

In testimony whereof I hereunto set my hand and affix the seal of the county court at Austin, this 12th day of March, A. D. 1870.

[SEAL.]

AUG. F. OTTO,
Clerk C. C., T. C., T.,
By F. W. SCHAFFUIT, *Deputy.*

43 *Exhibit E to bill and therewith filed May 16th,* 1870.—M. HOPKINS, *clk.*

Exhibit E. Copy of deed. James Kirchberg to Frank Pressler. Filed May 16th, 1870. M. Hopkins, clerk.

STATE OF TEXAS, *County of Travis:*

Know all men by these presents that I, James Kirchberg, of said State and county, for and in consideration of the sum of four hundred dollars, to me in hand paid, the receipt whereof is hereby acknowledged, have bargained, sold, released, and conveyed, and do by these presents bargain, sell, release, and convey unto Frank Pressler, of the above State and county, his heirs or assigns, a parcel of land known as lot number eight, (8,) in block No. one hundred and eleven, (111,) with all the improvements thereon, situated in the city of Austin: To have and to hold the above-described lot or parcel of land, with all the rights, privileges, and appurtenances thereunto appertaining, unto him, the said Frank Pressler, his heirs and assigns, forever, in fee-simple:

and I also do hereby warrant unto the said Frank Pressler, his
44 heirs or assigns, the title to said land, and will defend the same against the claim or claims of all and every person legally claiming or to claim the same, or any part thereof.

In testimony whereof I hereunto set my hand on this the 14th day of January, one thousand eight hundred and sixty-eight.

JAMES KIRCHBERG.

Witnesses:
F. DOHME & CHARLES BEHNKE.

[50-ct's int.-rev. stamp, cancelled.]

STATE OF TEXAS, *County of Travis:*

Before me, L. W. Collins, notary public Travis County, personally appeared James Kirchberg, to me well known, who acknowledged that he had signed the above instrument of writing, for all the uses, purposes, and considerations therein stated.

In testimony whereof I hereunto set my hand and affix the seal of my office this the 13th day of January, A. D. 1868.

[SEAL.] L. W. COLLINS,
Notary Public, T. C., T.

45 THE STATE OF TEXAS, *County of Travis:*

I, Aug. F. Otto, clerk of the county court in and for said State and county, hereby certify that the within and foregoing instrument of writing is a true and correct transcript taken of the records as it appears in Book R, on page 179, Travis County records.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Austin, the 14th day of March, A. D. 1870.

[L. S.] AUG. F. OTTO,
Clerk C. C., T. C., T.,
By F. W. SCHAFFUIT, *Deputy.*

46 *Exhibit F to bill and therewith filed May 16th*, 1870.—M. HOPLINS, *clerk.*

Exhibit F. Copy of deed. Caroline Wahrenberger to Charles Weise. Filed May 16th, 1870. M. Hopkins, clerk.

Caroline Wahrenberger to Charles Weise. Deed.

[50-ct's int.-rev. stamp, cancelled.]

THE STATE OF TEXAS, *County of Travis:*

Know all men by these presents that I, Caroline Wahrenberger, of the county and State aforesaid, for and in consideration of the sum of three hundred and fifty dollars, in specie, to me in hand paid, the receipt whereof is hereby acknowledged, have this day bargained and sold, and by these presents do bargain, sell, and convey unto Charles Weise, of the county and State aforesaid, his heirs and assigns, forever, the following-described lot or parcel of ground in the city of Austin, to wit, lot No. (7) seven, in block number (111) one hundred and eleven, in the city of Austin, Travis County, Texas: To have and to hold unto him, the said Charles Weise, his heirs and assigns, the above-
47 described premises, together with all and singular the privileges and appurtenances thereunto belonging; and I hereby bind myself, my heirs, and legal representatives to warrant and forever defend the title to said premises against the lawful claim or claims of all persons whomsoever.

In testimony whereof I hereunto set my hand this the 31st day of December, A. D. 1868.

CAROLINE WAHRENBERGER.

THE STATE OF TEXAS, *County of Travis:*

Personally appeared before me, the undersigned authority, Caroline Wahrenberger, to me well known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she executed the same for all the uses, purposes, and considerations therein expressed, and that the same is her act and deed.

In testimony whereof I have hereunto set my hand and seal of office, at the city of Austin, this the 31st of December, A. D. 1868.

[L. S.] F. W. SUTOR,
Notary Public, Travis County.

48 Filed for record March 2d, 1869, at 10 o'clock a. m. Recorded March 5th, 1859, at 9 o'clock a. m.

THE STATE OF TEXAS, *County of Travis:*

I, Aug. F. Otto, clerk of the county court in and for said State and county, hereby certify that the foregoing instrument of writing is a true and correct transcript as it appears of record in Book S, on pages 1st & 2d Travis County records.

In testimony whereof I have hereunto set my hand and affixed the seal of the county court, at Austin City, this the 14th day of March, A. D. 1870.

[SEAL.] AUG. F. OTTO,
Clerk C. C., T. C., T.,
By F. W. SCHAFFUIT, *Deputy.*

49 *Exhibit G to bill and therewith filed May* 16, 1870.—M. HOPKINS, *clerk.*

No. 815. Exhibit "G." Vol. 1. Patent to the heirs of Gustavus Kirchberg. Lots No' 7 & 8 in the city of Austin. Block 111. Filed May 16, 1870. M. Hopkins, clerk.

In the name of the State of Texas, to all to whom these presents shall come:

Know ye I, E. M. Pease, governor of the State aforesaid, by virtue of the power vested in me by law, and in accordance with the laws

of said State in such case made and provided, do by these presents, grant to the heirs of Gustavus Kirchberg, their heirs or assigns, forever, two lots or parcels of land situated and described as follows: In the city of Austin and the county of Travis, being lots Nos. (7 & 8) seven and eight, lot No. (7) seven, fronting on Brazos street (46) forty-six feet, and running back and fronting on Mulberry street (160) one hundred and sixty feet; and lot No. (8) eight, fronting (46) forty-six feet on Brazos street, and running back (160) one hundred and sixty feet, both in block No. (111) one hundred and eleven, as will more fully appear
50 by reference to the maps of said city, now on file in the general land-office. The same are hereby granted to the said heirs, in accordance with an act of Congress of the late republic of Texas, for the permanent location of the seat of government, with a joint resolution authorizing the survey and sale of the Austin City tract, and in accordance with the several acts of the legislature of the State of Texas, to authorize the sale of Austin City lots and reserved tract adjoining, approved September 3, 1850, and February 7, 1853, the same having been purchased and paid for on the 16th day of December, 1850, as per voucher on file in this office; hereby relinquishing to them, the said heirs of Gustavus Kirchberg, dec'd, and their heirs or assigns, forever, all the right and title in and to said land heretofore held and possessed by the said State, and I do hereby issue this letter-patent for the same.

In testimony whereof I have caused the seal of the State to be affixed, as well as the seal of the general land-office.

51 Done at the city of Austin, on the eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL L'D OFFICE.] JOSEPH SPENCE,
Commissioner G'l L'd Office.

[SEAL STATE TEXAS.] E. M. PEASE,
Governor.

And afterwards, to wit, on the 17th day of May, A. D. 1870, subpœnas issued to all of the defendants; subpœna to Caroline Newman, and her husband, A. B. Newman, in their own behalf, and sub-
52 pœnas to Caroline Newman, and her husband, A. B. Newman, as guardians of the minors, James, Mary, and Josephine Wahrenberger, heirs at law of John Wahrenberger, dec'd; and subpœnas to each of the other defendants, John B. Costa, Frank Pressler, and Charles Weise, in form to wit:

UNITED STATES OF AMERICA,
Western District of Texas:

Circuit court of the United States for the western district of Texas, at Austin, sitting in chancery.

The President of the United States to the marshal of the western district of Texas, and to all whom these presents shall come, greeting:

Louis Grosholz, Christiana Grosholz, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, and Wihelmina Eggert, of Philadelphia; Reuben A. Harwick and Amanda Harwick, Henry Stauffer and Emeline B. Stauffer, J. D. Bietel, Charlotte Bietel, Mary E. Eisenbrown, Francis Hauk, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kaemerer, and Simon K. Gross, guardian of Catherine Gross. who is a minor. residing

in Lehigh County; Penrose F. Eisenbrown and Matilda Steinbacher, residing at Pottsville, Schuylkill Co., and all resident citizens of the State of Pennsylvania, and William Eisenbrown, a citizen of the State of Maryland, residing in Carroll County, having filed their bill of complaint against Catherine Newman and her husband, A. B. Newman, in their own behalf, and as guardians of James, Mary, and Josephine Wahrenberger, minors, and heirs at law of John Wahrenberger, dec'd,

53 John B. Costa, Frank Pressler, and Charles Weise, all of whom are citizens of the State of Texas, residing in the county of Travis, and James Baker, (otherwise James Kirchburg,) in case he comes within the jurisdiction of the court in said district, who are made defendants:

We command you, and every one of you, the defendants herein named, that, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our court of chancery, to the bill herein recited and exhibited against you, and that you do answer concerning such things as shall then and there be alleged against you, and observe what our said court shall direct in this behalf, upon pain of an attachment issuing against your person, and such other process as the court shall award.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 16 day of May, A. D. 1870.

[L. S.] M. HOPKINS, *Clerk.*

Appearances are to be entered on or before the first Monday of July next, July rules; otherwise the bill may be taken as confessed.

M. HOPKINS, *Clerk.*

Issued 17 day of May, 1870.

M. HOPKINS, *Clerk.*

54 In like form subpœnas issued to the other defendants. The marshal's returns are endorsed on the subpœnas in words, to wit:

Subpœna to Caroline Newman and her husband, A. B. Newman. Received in office May 17th, 1870, and executed same day by handing a true copy of the within subpœna in chancery to A. B. Newman in person.

THO'S F. PURNELL, *U. S. M.*
By O. T. ZINK, *Acting Marshal.*

Subpœna to Caroline Newman and her husband, guardians of the minors James, Mary, and Josephine Wahrenberger, heirs at law of John Wahrenberger, dec'd. Iss'd 17th day of May, 1870.

M. HOPKINS, *Clerk.*

Marshal's return endorsed, to wit:

Received in office on May 17, 1870, and executed on same day by reading a true copy of the within subpœna in chancery to each of the following-named defendants in this suit, to wit: 1, Caroline Newman; 2, A. B. Newman, guardians of the following-named minors: 3, James; 4, Mary; 5, Josephine Wahrenberger, delivering said copy to each respective party in person.

THO'S F. PENNELL, *U. S. M.*
By O. T. ZINK, *Acting Marshal.*

Subpœna to John B. Costa. Iss'd May 17, 1870.

M. HOPKINS, *Clk.*

Marshal's return endorsed thereon, to wit:

Received in office on May 17th, 1870, and executed on same day by delivering a true copy of the within subpœna in chancery to John B. Costa in person, one of the within-named defendants.

THO'S F. PENNELL, *U. S. M.*
By O. T. ZINK, *Acting Marshal.*

55 Subpœna to Frank Pressler. Iss'd May 17th, 1870.

M. HOPKINS, *Clk.*

Marshal' return endorsed thereon in words, to wit:

Received in office on May 17th, 1870, and executed on same day by serving a certified copy of the within subpœna in chancery upon Frank Pressler in person, one of the within-named defendants.

THO'S F. PENNELL, *U. S. M.*
By O. T. ZINK, *Acting Marshal.*

Subpœna to Charles Weise. Issued May 17, 1870.

M. HOPKINS, *Clk.*

Marshal' return endorsed thereon is in words, to wit:

Received in office on May 17th, and executed on same day by delivering a true copy of the within subpœna in chancery to Charles Weise, one of the within-named defendants, in person.

THO'S F. PENNELL, *U. S. M.*
By O. T. ZINK, *Acting Marshal.*

And afterwards, at July rules, the following entry appears upon the rule-book:

MONDAY, *July 4th*, 1870.

HEIRS OF KIRCHBERG *vs.* MRS. NEWMAN AND OTHERS. } No. 53. Chancery.

And now comes the solicitors of the defendants, and enter their appearance in this cause.

BOWERS & WALKER,
Sol's for Defendants.

Test: M. HOPKINS, *Clk.*

And afterwards, at August rules, the following entry appears on the rule-book:

56 August rules. Monday, August 1, 1870.

LOUIS GROSHOLZ ET AL. *vs.* CAROLINE NEWMAN ET AL. } No. 53. Ch'y.

On this day came the def'ts, by their solicitors, Bowers and Walker, and file the consent of pl'ff for extension of time to file answer until the rule-day in Sept'r.

M. HOPKINS, *Clerk.*

Which consent is indorsed: Filed August 1, 1870.

M. HOPKINS, *Clerk.*

And is in words, to wit:

In U. S. circuit court for west. dist. of Texas, at Austin. In chancery.

LOUIS GROSHOLZ AND OTHERS
vs.
CAROLINE NEWMAN & OTHERS. } No. 53.

By consent of parties, the defendants have until September rule-day to answer.

Aug. 1st, 1870.

ROBARDS & JACKSON,
Sol's for Compl'ts.

And afterwards, at September rules, the following entry appears upon the rule-book:

September rules. Monday, Sept. 5, 1870.

LOUIS GROSHOLZ AND OTHERS
vs.
CAROLINE NEWMAN AND OTHERS. } No. 53. Chanc'y.

And now comes Bowers & Walker, solicitors for the defendants, and file the answers of Caroline Newman and A. B. Newman, and also the answers of the minors, James, Mary, and Josephine Wahrenberger, by their guardians, Caroline and A. B. Newman; and also the answers of Pressler and Weise and of Jno. B. Costa, trustee, defendants herein.

M. HOPKINS, *Clerk.*

57 The answer of Caroline and A. B. Newman, and as guardians for the minor heirs of John Wahrenberger, deceased, is indorsed: Filed Sept. 5, 1870, at rules.

M. HOPKINS, *Clerk.*

And is in words, to wit:

Answer of Caroline and A. B. Newman, for themselves and as guardians of the minor heirs of John Wahrenberger, dec'd.

In circuit court of the United States for the western district of Texas, at Austin. In chancery.

LOUIS GROSHOLZ AND OTHERS
vs.
CAROLINE NEWMAN & OTHERS. } No. 53.

The joint and several answers of A. B. Newman and his wife, Caroline Newman, (called A. B. Newman & Caroline Newman in the bill,) and of James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, infants, under the age of twenty-one years, by A. B. Newman and Caroline Newman, their guardians, defendants to the bill of complaint of Louis Grosholz, Christina Grosholz, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, Wilhelmina Eggert, Reuben A. Harwick, Amanda Harwick, Henry Stauffer, Emeline B. Staufer, J. D. Beitel, Charlotte Bietel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kaemerer, Simon K. Gross, guardian of Emma Catherine Gross, a minor, Penros F. Eisenbrown, Matilda Steinbacher, and William Eisenbrown, complainants.

58 These defendants, now and at all times hereafter reserving all manner of benefit and advantage to themselves of exception to the many errors and insufficiencies in said bill contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, each answering for himself, and not the one for the other, jointly and severally answer and say:

That they or any or either of them, to the knowledge or belief of the others or other of them, do not know and have not been informed, save by complainant's bill, and cannot set forth as to their belief or otherwise, save as hereinafter stated, as to statements of s'd parties, whether in or about the year 1838 or 1839, or at any other time, in Phila. or elsewhere, the s'd Catharine and Gustavus were lawfully married to each other; or that Catherine's maiden name was Wolf; or that

59 she, prior to 1828, had another husband, then dec'd, by name of Blaess; or whether complainants, by descent or inheritance, derive from said Catherine any estate whatever, or any title in the said lots No. 7 & 8, in block 111, described in the bill; or whether complainants are the heirs of s'd Catherine; or whether, from and after the year 1838, or 1839, or other date of such alleged marriage, the said Gustavus or Catherine lived or cohabited together as husband & wife in the city of Philadelphia or elsewhere until s'd year 1849; or whether, in said year, or at any other time, they moved from Phila. to Texas. Def'ts are informed and believe that s'd Gustavus & Catherine moved to and settled in the city of Austin, Travis County, in or about the year 1849; and thenceforward there continued to live and cohabit together as husband and wife until his death, in the year 1861; but s'd living together was not, as def'ts are informed and believe, continuous in said relation: but was interrupted by domestic broils & troubles, at which times, as def'ts are informed and believe, it was made known and stated by both of said parties that they had never been married to each

60 other, & that they had been living together without marriage. Def'ts are informed and believe that s'd Catherine, upon her deathbed, in the year 1862, assured her confidents and spiritual advisers that she had never been married to the said Gustavus; and so def'ts say, upon their information and belief, that said Gustavus and Catherine never were lawfully married.

Def'ts admit that s'd Gustavus departed this life intestate, in Travis County, Texas, on the day of , A. D. 1867.

Farther answering, def'ts upon information and belief admit that said Gustavus & Catherine never had any child or children, and def'ts submit to the court the question as to the laws of inheritance and governing community property in the State of Texas, under the circumstances as shall appear in this case.

Def'ts admit that on the day of , A. D. 1862, the said Catherine also departed this life intestate, in Travis County, without issue of her body and without having taken any other husband. Def'ts are unable to answer upon information and belief or otherwise, whether said Catherine left father or mother surviving.

61 Def'ts, severally answering, further say they do not know and never have been informed save by the bill of complainants, and by certain proceedings had in this court, on the law side thereof, against the def'ts Pressler and Weise, and in proceedings in the probate court of Travis County, in the estates of said Gustavus and Catherine, and cannot answer and set forth as to their belief or otherwise, whether the parties named in the bill as plaintiffs (except Louis Grosholz, Charles

V. Sauter, Charles H. Eggert, Reuben A. Harvick, Henry Stauffer, and J. D. Bietel, made parties by reason of having married some of the female plaintiffs,) are the next of kin or heirs at law or distributees, as alleged in the bill herein, of the said Catherine, or whether complainants are next of kin, and entitled to whatever share or property Wilhelmina Hoffman, or her alleged only son, W'm Hoffman, died seized of. Def'ts knowing nothing of said W'm Hoffman or of his relationship to Caroline, or whether there are any other persons than complainants of the next of kin, and entitled to a share in the estate of which s'd Catherine died seized, or entitled to any inheritance from her.

62 Def'ts admit that s'd Catherine left no will, and without having made any manner of disposition of the property described in the bill as the subject-matter of this suit.

Further answering, def'ts admit, upon their information and belief, that on Dec. 16, 1850, at a Government sale of Austin City lots, in the county of Travis, the s'd Gustavus became the purchaser of lots 7 and 8 in block 111, according to the plan of s'd city, and having paid the purchase-money for the same, his purchase was duly entered in his name upon the records and map of the general land-office. The def't' Caroline A. B. Newman say they are informed and believe that the said John Wahrenberger paid a part of the said purchase-money, to wit, the 2nd installment on same of $32.67, and took up the said note or obligation made by said Gustavus for s'd lots, the said John having had the said obligation in his possession, and which will be shown in evidence, the said John Wahrenberger and Anton Nelson being sureties, and s'd obligation which bore date 17th Dec., and was due 6 months thereafter.

Def'ts submit to the court whether by said purchase said lots became the common property of s'd Gustavus & Catherine as husband &

63 wife. And def'ts upon their information & belief deny that s'd lots 7 & 8 in block 111, remained or continued to be the community property of said Gustavus & Catherine, thenceforward and until the death of s'd Gustavus, nor is it true that upon the death of Gustavus that s'd lots vested in the s'd Catherine alone, and the truth in this behalf being that on 28th Nov., 1851, s'd lots were conveyed by deed in fee-simple by s'd Gustavus to the s'd John Wahrenberger, as will be more fully shown hereafter in this answer.

Def'ts further admit, upon information & belief, that at the date of the purchase of s'd lots by s'd Gustavus (and not by him & said Catherine) on Dec. 16th, 1850, they, they s'd Gustavus & Catherine, resided on lot 6 in the same block, and had their dwelling on the extreme back or rear edge of s'd lot 6, so that only an alley-way, 20 feet wide, intervented between their dwelling and the rear or back end of the said lot 7, and in the manner as shown by the sketch or plat in the bill.

Further answering, def'ts upon information and belief admit that previous to the purchase of s'd lot, the said Gustavus & Catherine had no kitchen or other tenement upon said lot No. 6 or elsewhere, ex-

64 cept their dwelling, (and perhaps a shop upon the front part of the lot.)

Def'ts do not know, nor are they or any of them able to answer, as to belief or otherwise, whether the purchase and acquisition of s'd lots was made with the intention or purpose, express or otherwise, of designating or using them as parts of their homestead.

Def'ts upon information and belief admit that after the purchase of said lots 7 & 8, the said Gustavus & Catherine erected upon the extreme rear or west end of lot No. 7, their kitchen, which was thereby placed just in the rear of their dwelling, and with nothing but said alley-

way, 20 feet wide, intervening, but s'd kitchen was not erected until the summer of the year 1852, and after the s'd lots had been sold by said Gustavus and conveyed to said John Wahrenberger, on Nov. 28, 1851; that further or otherwise it is not true that very soon after the purchase of s'd lots 7 & 8 the s'd Gustavus & Catherine erected said kitchen upon said lot.

Def'ts, *say* upon information & belief, deny that very soon thereafter, meaning very soon after s'd purchase of said lots on Dec. 16, 1850, s'd
65 Gustavus erected upon said lot No. 8 a brewery, but the truth in this behalf, as def'ts are informed & believe, is that in the summer of the year 1853, one Sittegast, as tenant of said Gustavus, erected upon said lot No. 8, a small house immediately adjoining lot No. 7, which house was by s'd Sittegast used as a dwelling for about 18 months; that in the latter part of the year 1854, s'd Sittegast left s'd house, and afterwards the premises were used as a brewery by one Schneider, a tenant of s'd Gustavus, and the business was for a long time carried on upon s'd lot by the tenants of s'd Gustavus. Def'ts do not know the interest of Gustavus in s'd brewery business. Admit that the entire value of the three lots 6, 7, & 8, at the time of the purchase or when s'd lot' were alleged to have been first used as homestead or as brewery, did not exceed in value two thousand dollars.

Def'ts, upon their information and belief, say it is not true that s'd lots 7 & 8, from the time they were so purchased as aforesaid, were part and parcel of the homestead of s'd Gustavus & Catherine. The lot 7 was used as part & parcel of the homestead, *and* from the erec-
66 tion thereon of s'd kitchen in the summer of the year 1852, and not before; the lot No. 8 was never used or occupied as part of the homestead before or prior to the latter part of the year 1854, when Sittegast left the place, and def'ts' information and belief is that said lot 8 never was used or occupied as a part of the homestead of s'd Gustavus; but was held by his tenants, sometimes operating at the brewery, and sometimes for mere use as dwelling.

Def'ts say, upon information and belief, admit that said lot No 7, from and after the erection thereon of said kitchen, continued to be used as a part and parcel of the homestead during the remainder of their lives, & of the life of s'd Catherine until her death in 1862; that said lot 8, from the erection thereon of the house by s'd Sittegast was held, used, and occupied by tenants of s'd Gustavus during his life, but was not, as a part or parcel of the homestead, & that said lot so continued to be used in like manner by said Catherine during her life.

And def'ts submit to the court whether said lots or any part of them, or either, were or not subject under the laws of Texas to be alienated, conveyed, or in any way incumbered by said Gustavus without
67 the concurrence of the said Catherine in the manner prescribed by law for the alienation of the homestead under the laws of Texas, such conveyance having been made prior to any use or occupation thereof as parts of the homestead.

And these def'ts, further answering, say they believe that it is not true that s'd lots 7 & 8, or either, became part of the homestead prior to the use and occupation of lot 7 in the summer of the year 1852, when the kitchen was built as aforesaid. They do not believe that lot 8 ever was used as part of the homestead by s'd parties, Gustavus & Catherine, or either; they admit that, from and after the building of s'd kitchen in 1852, the lot 7 was used, & so remained part of the homestead as aforesaid, and def'ts admit that, on or about Nov. 28th, 1851, the said Gustavus did assume, and undertook by his seperate deed of

that date, to convey the said lots to said John Wahrenberger, dec'd, and did on that day, without the concurrence of the said Catherine, execute to said John Wahrenberger his absolute deed purporting to convey to him, said Wahrenberger, the title in fee-simple to the s'd
68 lots 7 & 8; which deed was acknowledged and recorded as in the bill in this behalf is alleged, copy of which deed, called Exhibit "A," is on file; which deed for greater accuracy def'ts refer to & will use on the hearing.

And def'ts say they are advised and believe, and upon information & belief state that said deed was not void, nor is it void or of no effect as a conveyance of the title & interest in the lots 7 & 8; but they say that said deed conveyed to said John Wahrenberger, as against Gustavus & Catherine, a valid title therein, creating and constituting a bar to the recovery by complainants' asserting title to the same under said Gustavus & Catherine. And def'ts deny that s'd deed, otherwise than as aforesaid, created and still constitutes a cloud upon the title of complainants to s'd lots, or does greatly embarrass and obstruct them in asserting their rights therein; but said deed, being executed prior to any designation, use, or occupation of either of said lots as part of the homestead, was, in law and equity, a bar to any subsequent claim of said Gustavus & Catherine, or the heirs of either; and said deed is a muniment of title to the def'ts Pressler & Weise, holding s'd lots, and not an invalid instrument constituting a *could* upon the title of complainants.

69 Def'ts, further answering, say they believe it to be true that long after the making of said deed. Exhibit A, & on or about the 24 June, 1856, the s'd Wahrenberger obtained and procured another conveyance, including s'd lots 7 & 8, which conveyance was executed by Gustavus, and also by Catherine, therein styled his wife, and which conveyance was a deed of trust to def't, John B. Costa, as trustee for s'd Wahrenberger, and was made, as appears upon its face, as a security to s'd Wahrenberger for the sum of $435.00, for which sum the said Gustavus & Catherine executed their note of the same date, due three months thereafter, which deed of trust was acknowledged and recorded as in this behalf is alleged in the bill, the Exhibit B being certified copy from the record; but def'ts submit to the court that said trust-deed purports to convey all their right, title, and interest in and to the lots in the city of Austin, described as lots No. 6, 7, & 8, in block 111, with the improvements belonging to the same, as appears upon the face of the trust-deed, the said deed conveying the entire homestead lot 6 on which they resided, and whatever of interest they had in lot 7 & 8, there ap-
70 pearing to have been buildings erected as aforesaid upon said lots by said Gustavus, in which something of interest may have remained (def'ts are not advised of the matter so as to set forth as to what it was therein) in said Gustavus, and which passed by said trust-deed, and that said trust-deed does not operate as an estoppel to def'ts claiming the fee, as conveyed by the deed aforesaid of date Nov. 28, 1851, the said deed of trust conveying & taking effect upon their interest in said lots, and the improvements thereon.

Def'ts, further answering, admit that nearly four years after the making of s'd trust-deed, and on or about the 1st March, 1860, the said John Wahrenberger procured from said Gustavus and Catherine another conveyance for said lots 6, 7, & 8, which conveyance was also a deed of trust to the said John B. Costa as trustee for said John Wahrenberger, and was made, as appears upon its face, as a security for the payment of a promissory note, executed on the same day, for $496.50, by Gusta-

vus & Catherine to said John Wahrenberger, and payable 12 months thereafter. But this deed of trust upon its face is in terms as to the subject of the grant & its conditions like the former trust-deed, being a conveyance of all their right, interest, and title to said lots 6, 7, & 8, and improvements thereon, to secure said debt, and taking effect
71 upon lot No. 6 in fee and whatever of right, title, or of interest there may have been in said lots 7 & 8 by the erection thereon of said improvements by said Gustavus. Def'ts not knowing the terms on which s'd Gustavus erected s'd improvements upon said lots as aforesaid while the property of said Jno. Wahrenberger, s'd Gustavus appearing to have been a tenant at will as to s'd lots 7 & 8. Said trust-deed was acknowledged & recorded as is alleged in the bill in this behalf. Def'ts admit that in both of said deeds of trust said Gustavus & Catherine covenanted to warrant and forever defend the title to s'd lots to s'd Jno. B. Costa, as in the bill is alleged and as shown by said copies, Exhibit' "B" & "C." And def'ts submit to the court the legal effect of said deeds of trust, and they show to the court that they are informed and believe, and so allege, that the first deed of trust was surrendered to the grantors, upon their executing the second trust-deed aforesaid of date March 1st, 1860, which def'ts believe is a renewal of the former deed of trust then about being barred by limitation, and the time of payment being extended, at instance of said Gustavus. Def'ts admit that s'd Costa accepted the deeds of trust aforesaid, and the trusts
72 thereby created, at the request and solicitation of the said John Wahrenberger, and for his benefit; that no sale of any of s'd lots was ever made by said Costa, in pursuance of said deeds of trust. Def'ts further admit that since the making of said deeds of trust any and all indebtedness of the said Gustavus and Catherine to said John Wahrenberge' was fully paid off and discharged and extinguished, whereby the said deeds of trust were in equity released; but s'd indebtedness was not discharged until after the death of s'd parties, Gustavus & Catherine.

And def'ts submit to the court that the power to sell and all power, right, or interest of the s'd Costa under and by virtue of said deeds of trust ceased, and that thereafter he has no power under the laws of Texas to sell or in any way affect the state of the title to said lots, and that Costa, by any release or conveyance, could give no validity or strength to the claim of complainants, upon the death of the grantors; the deeds of trust had effect only as mortgages, which, upon payment of the debt secured thereby, became void by their terms; and the receipt for said money (the debt secured) being shown upon the records of the administration of s'd estates of Gustavus and Catherine, and de-
73 scribed in said proceedings as voucher No. 21, showing payment of said debt, the said trust-deeds have, nor could have, no further validity, and the property remains incumbered thereby.

Def'ts admit that no release or reconveyance was made by s'd Costa, nor was it necessary, the def'ts not having been paid until after the death of said Gustavus & Catherine; and these def'ts admit that s'd trust-deeds remain of record without any entry of satisfaction, but they submit to the court whether s'd trust-deeds so of record, after the death of the grantors and after the subsequent payment of the debt secured by them, do constitute any cloud or embarrassment upon any title or right of complainants or any others. And def'ts submit to the court that the said deed of trust, of date, and described as Exhibit C, was a renewal of the former deed of trust, Exhibit B, then about to be barred by limitation. And they submit to the hon. court, whether by

the s'd deeds of trust and the facts connected therewith, as set forth herein as fully as def'ts are able to do it, clearly or otherwise, appeared that the said John Wahrenberger, for many years after making of the absolute deed, Nov. 28th, 1851, (Exhibit A,) and notwithstanding the same, fully or otherwise recognized or acknowledged the absolute right or title of the s'd Gustavus & Catherine in the said lots 7 & 8,
74 def'ts admitting that said John Wahrenberger dealt with s'd Gustavus and Catherine concerning s'd lots, in permitting the said Gustavus, after his deed to Jno. Wahrenberger, to erect for the convenience of his family the kitchen as aforesaid, upon lot 7, and permitting its use during their lives as such, and in permitting the erection on the lot 8, by Sittegast, under said Gustavus, of a small house, in which s'd Sittegast resided for about 18 months, and after Sittegast left, its subsequent use and occupation by other tenants of said Gustavus for brewery and other purposes, and thereafter and evidently to bind whatever of interest the' may held in said improvements on lots 7 & 8, in taking the deeds of trust aforesaid and receiving them for his benefit, and def'ts submit to the court whether said John Wahrenberger was, or his assignees were or are thereby, estopped from claiming or setting up any right or title under or by virtue s'd deed in fee simple from s'd Gustavus, conveying, with warranty of seizin and title, the s'd lots as aforesaid. Def'ts, upon information and belief, say it is not true that, during all the time which elapsed from their first acquisition of s'd lots 7 & 8, on Dec. 16, 1850, down to the death of s'd Catherine in the year 1862, s'd lots 7 & 8 were in the actual use, oc'upation, and enjoyment of the s'd Gustavus & Catherine, so long as they
75 both lived, as part & parcel of their homestead, but it is only true, as def'ts are informed and believe, that said lot 7 was so occupied, used, and enjoyed as above set forth, from and after the building of s'd kitchen upon said lot, in the summer of 1852, & until the death of Catherine as aforesaid, the lot No. 8 was not occupied and used for any purpose prior to the building thereon in the year 1853, in which Sittegast resided for about 18 months, after which and until the death of Catherine, said lot was used, held, and occupied by tenants of said Gustavus, and after his death and during Catherine's life, by tenants under her, and not otherwise, as def'ts are informed and believe.

Def'ts admit that after the death of said Gustavus the said lot No. 7 was used, as alleged in the bill, as part of the homestead of said Catherine and until her death; def'ts deny that lot 8 was, during said time, so used as part of her homestead, but it was held by her tenants holding under her until her death.

Def'ts admit that during the time intervening from the first occupation of said lots as above stated, until the death of said Gustavus and not otherwise, or for any other period, nor for ten years after the date of said deed, (Ex. A) Nov. 28, 1851, to Jno. Wahrenberger, the
76 lot No. 7, only from the building of the kitchen thereon in summer of 1852, and the lot No. 8, from the building of the house thereon by Sittegast, in 1853, did the said Gustavus & Catherine hold, use, occ'py, possess, and enjoy s'd lots as of their own property, but def'ts do not know nor are they able to answer as to their belief or otherwise, whether said possession, &c., was as of their own absolute right, or that it was adversely to s'd Wahrenberger, or that such use, &c., was other than as tenant at will. And def'ts admit that it was adverse to all others.

Def'ts are informed and believe that such occupation and enjoyment as aforesaid, of lots 7 & 8, was open and notorious during all of said

time, & was well known to said John Wahrenberger during all of said time, (the said John & Gustavus, during said time, being intimate friends and neighbors;) and was never by him or any one else disturbed or denied; def'ts have no information of, nor do they believe, that the said Gustavus and Catherine had or made any claim to lots 7 or 8, against s'd John Wahrenberger, open or notorious or otherwise, or that any such adverse claim was known to s'd John Wahrenberger, or that any such claim was ever asserted to s'd lots or acquiesced in by him, and def'ts, further or otherwise than as aforesaid, upon their in-

77 formation and belief, deny that during all this time and for more than ten years, after Nov. 28, 1851, said Gustavus & Catherine so held, occupied, possessed, and enjoyed the s'd lots 7 & 8, as of their own absolute right and property, adversely to the said John Wahrenberger, notwithstanding said deed of date Nov. 28th, 1851, and adversely to all others, and that their occupation, enjoyment, & claim as aforesaid, of and to the said lots 7 & 8, was open and notorious during all of said time, and was well known to the said John Wahrenberger during all of said time, and was never, by him or any one else, disturbed or denied.

And def'ts submit to the court whether the title conveyed by Gustavus Kirchberg to John Wahrenberger, on Nov. 28th, 1851, wherein the fee in said lots 7 & 8 was conveyed to said John, was precluded, barred, or divested by the adverse occupation, possession, or claim, as aforesaid, of the said Gustavus & Catherine, and by force and effect of the statutes of limitation in this behalf, such adverse possession not having been continued for ten years, and whether the right, title, and interest therein was thereby revested in said Gustavus & Catherine as against s'd John Wahrenberger and the def'ts claiming under him.

78 Further answering, def'ts, upon information & belief, say that it is not true that said Gustavus and Catherine had the title and possession of said lots 7 & 8, in block No. 111, as long as they or either of them lived further or otherwise than as above particularly set forth and stated, nor, as def'ts are advised and believe, did the said lots 7 & 8, upon the death of said Catherine Kirchberg, descend to or become part of the property of the complainants as her heirs, there being no estate in said Gustavus to descend to her, and none to descend from her to complainants or any others as heirs, the title in said lots being, upon the death of each of them, still in the s'd John Wahrenberger; nor is it true that the said John Wahrenberger did, in disregard of the rights of complainants, fraudulently or otherwise, conspire or confederate with any person, so far as def'ts are informed or believe, to deprive complainants of any of their rights of property; and def'ts admit that, on March 4, 1864, John Wahrenberger made and delivered to the said James Baker, alias Kirchberg, (def'ts cannot answer which is the true name of said James) a deed for said lot; the said John Wahrenberger having, at the time, as def'ts are advised & believe, a legal or

79 equitable right or title in and to said lot; nor is it true that it was then well or otherwise known to both or either of said parties that s'd John Wahrenberger had no legal or equitable title therein.

Def'ts admit that s'd deed purports, upon its face, to have been made in consideration of the sum of one dollar, which sum, it is apparent, was but a fictitious or nominal consideration, and which, if ever paid, was no real or adequate consideration for said lot, which was then of the value of four hundred dollars, and not the value of 1,200.00 dollars, as alleged in the bill, and which is now of the value, with all improve-

ments thereon, the sum of $1,800.00, *dollars*, on which have been erected, by def't Pressler, the principal part in value of the improvements, as def'ts have been informed, is about $1,200.00 so placed thereon by him. Said deed was proved up for record & recorded, as alleged in the bill, the Exhibit D being a copy of said deed.

Def'ts admit that, afterwards and on 14th Jan., 1868, the said Baker, alias Keichberg, did, by deed of that date, attempt to, and, as def'ts are advised, did, in law and fact, convey to the def't, Frank Pressler,
80 the s'd lot No. 8, for an expressed consideration of $400, the Exhibit E being a copy of said deed, which said sum, these def'ts believe, was, in fact, paid by said Pressler.

Def'ts further say they believe that it is not true that the def't, Pressler, at & long before the date of the said deed, (Jan. 14, 1868,) well or otherwise knew the fact to be that the said James Baker, alias Kirchberg, had no right or title to said lot No. 8; nor is it true, as def'ts believe, that he (Pressler) had actual or constructed notice of any facts affecting the validity of said Baker's title, if any such exist other than what appears upon the face of the s'd deed & hereinafter set forth, the deed shewing that said Baker paid no adequate consideration to said John Wahrenberger; or that he (Pressler) knew or believed that the deed from Jno. Wahrenberger to said James conveyed no title, but def'ts are advised and believe that s'd Pressler made careful examination into the title, taking counsel of one or more attorneys, and that when he made the said purchase, he was advised and believed that s'd deed from Wahrenberger to James did convey title thereto. And these defendants do not know, nor can they state, whether said Pressler well or otherwise knew that s'd Gustavus & Catherine had claimed s'd
81 lot down to & at the time of their deaths. Def'ts believe he knew that they had occupied and enjoyed s'd lot, for some time, and down to and at the time of their deaths, as their own property.

Answering further, def'ts believe that the said Pressler did pay to said James Baker, alias Kirchberg, the consideration ($400.00) in said deed (copy Exhibit E) mentioned, and that said sum was an adequate and fair consideration therefor; nor is it true, as def'ts believe, that said Pressler did not pay to said James the said consideration or any other adequate or fair consideration therefor.

Nor is it true, so far as these def'ts know or believe, that the def't, Pressler, knew well or otherwise, or was informed or believed, that the deed of said James Baker, alias Kirchberg, was no title or conveyance to said lot; nor that Pressler desired it merely or otherwise as color or pretence of title; or that he rec'd s'd deed by confederation with said James, & without any consideration in fact, or for a trivial consideration; or that he (Pressler) rec'd said deed for the purpose of defrauding or depriving complainants of any property in said lot No. 8, or of their property therein, these def'ts believing that, at that time, the complainants had no title or interest therein.

82 Def'ts admit that said deed to Pressler (Exhibit E) has a general warranty of title, but they deny upon information and belief that s'd deed was illusory, or designed to deceive by fair appearances; the def'ts having no knowledge of any facts affecting the honesty or good faith of said transaction between Pressler & said James Baker, alias Kirchberg.

Def'ts beli've that said James had no means or property whatever, to make good a breach of warranty, and def'ts do not know, but they are of opinion, that said Pressler knew that such was the condition of said James, and that his warranty was no adequate security for the

title. Def'ts believe that s'd purchase was not made upon the strength of the vaildity of said James, to respond in damages for breach of warranty, but was made upon belief in & reliance upon the validity of the title received.

Def'ts admit that soon after the making of s'd deed the said James left the city of Austin, and Texas, and went to parts unknown to def'ts, and has never returned; said James being a journeyman printer, and of roving disposition. Def'ts state that under title of said lot No. 8, thus derived through said James, honestly and without any fraud,
83 and upon payment of the said sum of $400,00, as def'ts are informed and believe, consideration, which was a fair and adequate price for said lot 8, the def't Pressler has ever since the 14th of Jan'y, 1868, occupied the said lots, and further or otherwise it is not true that under pretense of title to s'd lot 8, thus derived throught his fraudulent collusion with the said James, and without having paid any fair or 'dequate consideration for the s'd lot, def't Pressler wrongfully occupied s'd lot. Def'ts admit that said Pressler has since said date, taken the rents, issues, & profits of s'd lot, of which def'ts are unable to answer as to value.

Further answering, def'ts admit that def't Caroline was the wife of said John Wahrenberger; that said John departed this life some time early i n the year 1864, and that she afterwards intermarried with def't, A. B. Newman; that after the death of said John, and before her marriage with def't, A. B. Newman, on or about Dec. 31st, 1868, she executed to def't Weise a deed in fee-simple for the lot No. 7, in block 111, with covenant of general warranty, which deed was acknowledged & recorded as in the bill in this behalf is alleged; the Exhibit F, filed with
84 the bill, being a copy thereof, and it is not true that she knew or believed that she had no right, title, or interest in and to the same, or that she conspired fraudulently or otherwise, or confederated with def't Weise, with any design to defraud complainants of any right or title in s'd lot, nor that with such or any fraudulent design did she execute said deed to Weise.

But the said lot 7, upon the death of s'd John Wahrenberger, descended to his heirs and divisees and became part of his estate, subject to partition among and between the s'd Caroline and the said minor children, James, Mary, and Josephine, heirs and divisees of said John. That during the year 1868, the said Weise, (a carpenter by trade,) was working for the def't, Caroline, and by agreement he was to take the said lot at $350 in specie valuation for work, and before the close of that year Weise had paid said am't in labor, and possession of the lot was given him. The execution of the deed had been delayed for the partition, but was at last executed as above stated, and before partition of the property between her and the said minors, and with warranty, she (the said Caroline) expecting to have the lot set apart to her
85 share in the pe'tition with the s'd minors. That after the deed, and after her marriage with said A. B. Newman, the partition of the lands and other property descended from said John Wahrenberger, was had & confirmed by the county court of Travis County, on the 1st day of October, A. D. 1869, by which partition the lot 7 was set apart to def't Caroline, & the same accrued to the benefit Weise; relating to his deed on Dec. 31st, 1868, said partition was made in the said court in the matter of the guardianship of the said minors, as will be shown on the hearing.

Def'ts admit that said deed recites a cash consideration of $350.00 in specie, and they state and allege the truth to be that s'd amount was, as above stated, paid in work & labor done by Weise, & that said sum

was a full and adequate consideration, the labor being done at cash, specie, rates; nor is it true that said sale was pretended, or the conveyance a sham or fictitious transaction between said Caroline & Cha's Weise, nor was the same fraudulent, or a device to deprive complainants of any right or title in said lot, but the said transaction and conveyance was bona fide and as above set forth.

Further answering, def'ts say it is true that def't Weise ever
86 since Dec. 31st, 1868, has had possession of said lot under said deed, but not under color or pretence thereof, and has had the use of said lot and has taken and rec'd to his own use the rents, issues, & profits of the same, which def'ts believe, during the entire time, would not in value exceed four dollars per month, and not the sum of ten dollars, as alleged in the bill.

Def'ts further say that the actual value of s'd lot No. 7, on Dec. 31, 1868, was not $600.00, but was not exceeding $350.00, coin, nor is its present value $1,000, as def'ts are of opinion, but believe that it is worth about $600.00. Def'ts, upon information and belief, deny that def't Weise, at and before the date of his deed for said lot, (Dec. 31st, 1868,) had notice that the rightful title or ownership of said lot was in the heirs of said Catherine Kirchberg, or that said title was not in s'd Caroline, as above stated. Def'ts say it is true that Weise knew that for many years before the death of said Catherine she and the said Gustavus had occupied, used, and enjoyed the said lot as part of their property and of their homestead. But def'ts do not know are they
able to answer whether Weise knew or believed that said Gus-
87 tavus & Catherine had claimed said lot adverse to said John Wahrenberger, as their homestead or otherwise; these def'ts believing such adverse claim never was in fact made, believe that Weise could not have known it, and def'ts submit to the court whether def't Weise did, by means of said deed, (Ex. F,) take and obtain title in said lot, showing and holding the chain of title up to the said deed of 28th Nov., 1851, from said Gustavus, having bought, paid for, received possession of, and had a deed executed to him before and without any notice, actual or constructive, of any defect in his title. Further answering, def'ts say they are advised and believe, and upon such information and belief they say that it is not true that the said deed referred to, or exhibits A, B, C, D, E, & F, are each and all of them of no validity, either at law or in equity, to divest complainants of title or ownership in said lots No' 7 & 8, in block No. 111, but they say that the deed of Nov. 28th, 1851, (Ex. A,) was valid to convey said lots 7 & 8 to said John Wahrenberger; the deed from Wahrenberger to James Baker, alias Kirchb'rg, (Ex. D,) convey' lot 8 to said James; the deed from him,
(James Baker, alias Kirchberg,) to def't Pressler, (Ex. E,) con-
88 veyed the title to same, to said Pressler; and the deed from Caroline Wahrenberger to said def't Weise, (Ex. F,) (with the descent to heirs of s'd John, and the partition setting lot 7 apart to said Caroline,) was a conveyance of lot 7 to the def't Weise; the trust deed of date June 24th, 1856, (Exhibit B,) was valid to the extent of its grant, as before stated, and was surrendered to the grantors upon the making of the trust deed of date March 1st, 1860, (Ex. C,) which was a renewal of the former security, and which, upon the death of the grantors, became in law thereafter a simple mortgage, and it (said trust deed or mortgage) was discharged and rendered invalid by the payment of the debt therein named, for which it was security; and def'ts submit to the court that the deeds described as Exhibit' A, D, E, & F are muniments of title in the said def't Pressler, as to lot No. 8, and in

the def't Weise as to lot No. 7, and that the same, with the facts alleged herein, as fully as those def'ts can, upon the best and utmost of their knowledg', information, and belief set forth, are a bar to recovery by the complainants; and they say that further or otherwise it is not true that the said deeds, with the deeds B & C, have been and
89 still are clouds upon the title of complainants, nor obstacles (serious or otherwise) and embarrassments to claimant's recovery to said lots.

Def'ts admit that under the deeds described as A, D, & E the def't, Pressler, holds lot No. 8, and under deeds described in the bill as A & F the def't, Weise, holds lot No. 7, but such holding def'ts believe not to be under pretense or wrongful, as alleged in the bill, the said def'ts, Pressler and Weise, as herein stated, withholding from the complainants the possession and enjoyment of said lots, and so holding them that said Pressler has taken & converts to his own use the rents, issues, and profits of lot No. 8, during his possession as aforesaid, and the def'ts Weise has taken and converted the rents, issues, & profits, *lot* lot No. 7, during his possession, as aforesaid.

Def'ts admit that def't Caroline, claiming and pretending to have had, by virtue of said deed, (Ex. A,) and through her husband, John Wahrenberger, dec'd, as aforesaid, the right to s'd lot No. 7, disclaiming any interest in lot No. 8, (and not claiming any interest under the deeds described as Exhibits B & C,) has and still refuses to account or pay over to complainants any of the proceeds, rents, issues, &
90 profits of the s'd lots, and further or otherwise it is not true that she, pretending to have some interest, &c., refuses to account to complainants. Further, def'ts say it is true that she rec'd in work and labor of s'd Weise the sum of $350, coin, during the year 1868, as aforesaid, for lot No. 7, and the rents and profits of said lot for the years 1865, 1866, 1867, & 1868, and part of the year 1864, during which term the rents rec'd did not exceed 25.00 dollars per annum. Def'ts have no books, memorandums, or papers to verify the am't rec'd, and are unable to set out the amount with accuracy; and as to all of said mon*ies* rec'd or for which she may be liable, accruing more than two years before suit, she pleads the statute of limitation of two years. Def'ts admit that said Caroline was the executrix, (not the administratrix,) of the will of said John Wahrenberger, dec'd, and also one of the devise's and distributees of his estate, and such has derived and inherited a large amount of real and personal property, and mon*ies*, and that she and her husband, A. B. Newman, are the guardians of the minors, James, Mary, and Josephine, infant heirs of John Wahrenberger, their father, and who have also inherited from his estate large property, both real and personal.

91 Admit that said Caroline & A. B. Newman have not, nor have either of them, in their own behalf, or as guardians of the said minors James, Mary, and Josephine, ever accounted or paid over to complainants the value of said lot No. 8, so conveyed by said John Wahrenberger in his life-time, to said James, nor any of the rents, issues, or profits thereof, rec'd or converted to his own use by said John in his life-time, during the years 1862, 1863, and part of 1864, nor indeed ought they so to do, the title and estate therein being, as they are advised & so state, having been in said John Wahrenberger and not in the complainants. Defendants further submit *such* during said term, the said lot, as def'ts are informed & believe, remained in the possession of s'd James Baker, alias Kirchberg, who took the rents and profits during the term, and def'ts further submit to the court that more

than two years have elapsed since the accrual of any action for such rents and profits, received by said John, or since the accrual of any other action for which he might in any way be liable for or on account of rents and property of said lot, for said term or otherwise, and before the filing of this suit, and such claim, if any existed, is barred by
92 limitation of two years. And def'ts say it is not true that said rents and profits of said lot were of the annual value of $300, but were during said years not exceeding the value of eight dollars per annum. Def'ts have no account or memorandums to fix said sums or values. Def'ts believe that said James Baker, alias Kirchberg, has never in any manner accounted to or settled with complainants for the value of said lot No. 8, by him conveyed as aforesaid to said Pressler.

Submit that said Costa did not, as trustee, in the life-time of said Gustavus & Catherine, reconvey or release to them, or either of them, the title or interest which took in said lots, by virtue of said trust-deeds, nor has he since their death ever so released or reconveyed to the complainants. The deed of trust of June 24, 1856, (Ex. B,) having been renewed and superced' by the second, of date 1st March, 1860, (Ex. C,) was of no validity thereafter, and the second deed of trust not having been satisfied or the power executed in the life time of the makers, the power to sell was destroyed by their death; and def'ts submit to the court whether it was the duty of said Costa to make any such
93 release, nor was it necessary or proper for him, after his power to sell ceased, for him to execute any release or conveyance whatever; the right of said John Wahrenberger, and of his estate, upon the payment of the debt secured by said trust-deed having been fully divested upon such payment, which payment appears & is shown by the proceedings had in the matter of the administration of said estates of said Gustavus & Catherine. Def'ts admit that all indebtedness from said Gustavus & Catherine has long since been paid off as aforesaid, and the said deeds of trust fully satisfied. Further answering, admit that at the time of the death of said Catherine, the date when complainants estate, if any accrued, as heirs of said Catherine, and when it is alleged in the bill that complainants inherited said lots 7 & 8, from said Catherine, (def'ts, saying it is not true that complainants inherited anything in the said lots,) the late war of the rebellion was being waged by the State of Texas, as one of the Confederate States, against the United States, and in consequeuce thereof persons who were residents of the loyal States could not take possession of their property or otherwise look after and protect the same.

94 Defendants do not know, nor are they able to answer as to belief or otherwise, whether said complainants at the date of the death of said Catherine were citizens or residents of the loyal States, and def'ts admit that, if the complainants so resided, they could not look after or protect any rights of property they had during said rebellion in the State of Texas, until the close of the said rebellion.

Further answering, def'ts admit that, after the death of said Gustavus and Catherine, the said John Wahrenberger took and obtained letters of administration upon this estate, and upon the death of said John, the def't Caroline became adm'x de bonis non, of the same. By means thereof they, the said John, & afterwards the said Caroline, obtained possession, in their fidiciary capacity, of all the property, real and personal, of the said Gustavus & Catherine; but def'ts deny that said John or the said Caroline so in their fidiciary capacity obtained possession of the lots 7 & 8, in the said block 111; and def'ts say they believe said John took possession thereof in his own right as in law & equity he was en-

titled to do, permitting s'd James Baker, alias Kirchberg, to hold and collect the rents and profits of lot 8 for some months, and afterwards conveying the same to him as aforesaid, on March 4th, 1864.

95 The said Caroline, after her husband's death, never did set up any right, or exercise any control, over lot No. 8, but did take possession of the lot No. 7, as part of the estate of the said John Wahrenberger, her husband, and thereafter rec'd it in her own right on partition as aforesaid; that by having the possession of said lots as aforesaid, they were *out* not in their fidiciary capacity able to control & dispose of them in the manner herein set forth. Deny that such disposition of said lots was fraudulent or in disposition thereof in excess of their estate therein.

Admit that the administration of the estates of said Gustavus & Catherine in the county court of Travis County has been closed. Def'ts do not know, nor are they informed so as to answer as to belief or otherwise, whether after the close of the rebellion, complainants, by means of correspondence with their attorneys or otherwise, sought to acquire information as to their rights and interests in the estates of said Catherine, or what discoveries as to the said lots were made, or when such discoveries, if any, were made.

Admit that on February 11th, 1869, complainants, by their att'ys, Robards & Jackson, sued out a patent for the said lots from the general

96 land-office of the State of Texas, which patent is sued under the rules governing said office, to the heirs of Gustavus Kirchberg, which patent is on file as alleged in the bill, and def'ts will use the same on hearing as evidence. And def'ts submit to the court whether said patent accrues to the complainants as heirs of said Catherine; insisting that the patent related to the warranty deed executed by said Gustavus Kirchberg on Nov. 28th, 1851, to the said John Wahrenberger, and enured to the benefit of the assignees of said John as above stated.

Further answering, def'ts admit that complainants, diligently pursuing their rights (real or supposed) and relying upon the s'd patent and their title as set out in the bill, did, on the 12th day of February, 1869, being their suit of trespass to try title for the recovery of said lots on the law side of this court, against the said Frank Pressler & Cha's Weise, (therein called Weiser.) The said action of trespass to try title came to trial in this court on the law side, on or about the 24th day of June, 1869, and the def'ts therein introduced in evidence and relied upon the said absolute deed (Ex. A) from Gustavus Kirchberg to John

97 Wahrenberger, of date Nov. 28th, 1851. And upon said trial complainants, (plff's in said action,) for the purpose of showing (if they could) the invalidity of said deed, proposed to introduce as evidence the said deeds of trust, Exhibits B & C, but the court held that they were inadmissable in evidence in the suit at law and the deeds of trust were excluded, and that under the evidence as allowed to go to the jury and under the instructions based thereon, there was a verdict in favor of the def'ts Pressler and Weiser, and against plaintiffs, (complainants herein,) and a judgment was rendered thereon; in which action were in issue the heirship of pl'ffs, claiming as heirs of said Catherine, the validity of the alleged marriage, of Gustavus & Catherine, and whether at the date of the deed by Gustavus to John Wahrenberger, Nov. 28, 1851, the said lots or any part thereof were part or parcel of the homestead. And, upon these and other issues so formed, the jury rendered the verdict against the pl'ffs and in favor said Pressler & Weise, (therein called Weiser,) upon which verdict as aforesaid was rendered

a judgment that pl'ffs take nothing by their suit and that the def'ts recover their costs of said pl'ffs, which appears of record and will be
98 shown on the hearing of this suit; which judgment remains unreversed nor appealed from and in full force and effect against complainants. And def'ts submit to the court that the said proceedings, verdict, and judgment so rendered, so as is alleged and within less than one year before the filing of the bill herein, is nevertheless a bar to and precludes the claim of complainants herein urged, admitting that under the laws of Texas said proceedings would not bar a second action in trespass to try title, with' one year from rendition. And the said defendants James, Mary, & Josephine Wahrenberger, by their said guardians, Caroline and A. B. Newman, further answering, say that they are infants under the age of twenty-one years, and they and each of them therefore submit their rights & interests in the matters in question in this cause to the protection of this honorable court. And the def'ts Caroline & A. B. Newman, in their own behalf and as guardians of the minors James, Mary, and Josephine, answering to the interrogatory No. 1, say they have answered to each and all of the allegations in the stating part of the bill, admitting what of the bill they know or believe to be true, when denying they have given the truth to the utmost
99 of their knowledge, information, and belief as to said parts so denied, and when allegations have been true in fact, the' have so stated, giving the truth as to such allegations, denied or modified to the utmost of their knowledge, information, and belief as to each and all allegations so denied in whole or in part, failing to answer only when ignorant as to the subject-matter, or where questions of law, or conclusions from facts answered in detail have been inquired of, and having answered fully the interrogatory in the former part of their answer, they refer to the same from the top of page 3rd to the word "complainants" at the end of 5th line from bottom of page 29, for details as to the interrogatory No. 1, aforesaid.

And all of said def'ts deny all unlawful combination in the bill of complainants charged without that any other matter or thing material for them to make answer unto and not herein sufficiently answered, avoided, or denied is true to the knowledge or belief of these defendants. All which matters & things these defendants are ready to aver and prove as the court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wron'fully sustained.

CAROLINE NEWMAN.
A. B. NEWMAN.

BOWERS & WALKER,
Solicitors for Def'ts.

100 STATE OF TEXAS,
County of Travis, ss:

On this fifth day of September, A. D. 1870, before me personally came and appeared Caroline Newman and A. B. Newman, who, being by me sworn, do say that the above and foregoing answer signed by them (being their joint and several answer and the joint and several answer of the said infant defendants James, Mary, & Josephine Wahrenberger, by their guardians, the said Caroline & A. B. Newman,) is true of their own knowledge except as to such matters as are therein stated to be on their information or belief, and that as to those matters, they believe it to be true. Subscribed and sworn to before me, at Austin, Texas, this 5th September, 1870.

WESTON ROUAND,
U. S. Commissioner.

101 The joint and several answer of Frank Pressler and Charles Weise, endorsed "Filed Sept. 5, 1870, at rules. M. Hopkins, clerk," is in words, to wit:

Answer of Frank Pressler and Cha's Weise.

In the circuit court court of the United States for the western district of Texas, at Austin, Sept., 1870.

LOUIS GROSHOLZ & OTHERS *vs.* CAROLINE NEWMAN & OTHERS. } No. 53.

The joint and several answer of Frank Pressler and Charles Wise, two of the defendants to the bill of complaint of Louis Grosholz, Christina Grosholz, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, Wilhelmina Eggert, Reuben W. Harwick, Amanda Harwick, Henry Stauffler, Emiline B. Stauffler, J. D. Bietel, Charlotte Bietel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kaemrerer, and Simon K. Gross, guardians of Emma Catherine Gross, Penrose F. Eisenbower, Matilda Steinbacker, and William Eeisenbrown, complainants, against Caroline Newman and her husband, A. B. Newman, in their own behalf and as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine
102 Wahrenberger, minors and heirs at law of John Wahrenberger, John B. Costa, Frank Pressler, and Charles Weise.

These defendants, now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or either of them to make answer unto them, these defendants, jointly and severally answering, severally say:

That they or either of them, to the knowledge or belief of the other, do not know, or have they any information, (save as they are informed thereof in the said bill and in the proceedings had by the complainants on the law side of this court against these defendants refer'ed to in the bill,) and so they cannot, as to their belief or otherwise, answer or set forth whether, on or about the year 1838 or 1839, in Philadelphia, or at any other time or place, the said Gustavus and Catherine were lawfully married to each other, or that the maiden name of said
103 Catherine was Wolf, or that she had any husband by name of Blaess, or w'ether said Gustavus and Catherine, from and after their alleged marriage, lived or cohabited together as man and wife in Philadelphia, until in the year 1849, or for any other period of time. Defendants admit that they are informed and believe that, about the year 1849, the said Gustavus and Catherine emigrated from Philadelphia, and settled in the city of Austin, and thenceforward they continued to live and cohabit together as husband and wife until his death in the city of Austin, in the year 1861; but said living together was not continuous and uninterrupted in said relation, but was often interrupted by domestic quarrels, at which time, as defendants are informed and believe, it was made known and stated by both parties, Gustavus and Catherine, that they had never been legally married, and that they had

been living together without marriage, legal or otherwise. Defendants further state, upon information and belief, that, in the last illness of said Catherine, and when on her death-bed, she assured her friends
104 and spiritual advisers that she had never been married to the said Gustavus. Defendants admit that said Gustavus departed this life intestate, in Travis County, in the year 1861.

And, further answering, they say they are informed and believe that said Gustavus and Catherine never had any child or children, and defendants submit to the court the question of the laws of inheritance and of community property presented by the bill under the alleged circumstances. Defendants also admit that, in 1862, the said Catherine also departed this life at said city of Austin, never having taken another husband, nor leaving issue of her body; but defendants are not informed and cannot state, on belief or otherwise, whether she left father or mother surviving.

And defendants, further answering, say that they do not know and cannot state and set forth, as to belief or otherwise, save as they are informed in the bill and in said proceedings in the case of the complainants vs. these defendants, on the law side of this court, refer'ed to in the bill, whether the parties named in the bill as plaintiffs (save those made par-
105 ties by reason of having married some of the female plaintiffs) are or not the next of kin and heirs at law of the said Catherine, nor can these defendants answer, as to belief or otherwise, whether said W'm Hoffman is living or dead, or whether, if living, he is an heir at law or distributee of the estate of said Catherine, nor whether the son and only child of William Hoffman, nor whether said Wilhelmina is living or dead, or whether she is or was sister of said Catherine, or whether complainants are next of kin of said W'm Hoffman, or his heirs at law, or distributees of any estate he, the said W'm Hoffman, left, nor that there are no other persons than complainants of the next of kin to said Catherine, or entitled to any inheritance from her.

Defendants admit that said Catherine left no will or testament, and died intestate, and without having made any disposition of the property described in the bill as the subject-matter of the suit.

And defendants, further answering, admit that, on December 16th, 1850, at a Government sale of Austin City lots, in Travis County,
106 the said Gustavus Kirchberg became the purchaser of lots 7 & 8 in block No. 111, according to the plan of said city, and that, having paid in some way for the same, the purchase thereof was duly entered in his name upon the records and map of the general land-office.

Defendants submit to the court whether by means of such purchase the said lots, under the laws of the State of Texas, became the common property of said Gustavus and Catherine, as husband and wife, and they state their information and belief to be that it is not true that said lots remained and continued to be the common property of said Gustavus and Catherine thenceforward, and until the death of said Gustavus, these defendants being informed and believing that all the right, title, or claims of either and both of said parties was conveyed by said Gustavus to John Wahrenberger on Nov. 28th, 1851, and that it is not true that by the death of said Gustavus said lots vested in the said Catherine. Further answering, defendants say that they are informed and believe that at the date of the said purchase,
107 16th Dec., 1850, of said lots 7 & 8 by said Gustavus, (not by Gustavus and Catherine,) they resided on lot No 6, in the same block, and had their dwelling-house on the extreme back or rear edge of said lot No. 6, so that only an alley-way 20 feet wide intervened between their

dwelling-house and the rear or back end of said lot No. 7, in the manner shown by the sketch in the bill. And defendants are informed and believes that, previous to the purchase of said lots 7 & 8 s'd Gustavus & Catherine had no kitchen or other tenement upon lot No. 6, or elsewhere, unless, perhaps, on front of the lot was a shop, except their dwelling as aforesaid.

Defendants do not know, nor have they information, so as to answer as to their belief, or otherwise, whether the purchase or acquisition of said lots 7 & 8 was made with the intention or purpose, express or otherwise, of designating or using them as parts of their homestead.

Def'ts admit that, after the purchase of said lots 7 & 8, the said Gustavus & Catherine erected upon the extreme or rear end of lot No.
108 7, their kitchen, which was thereby placed just in the rear of their said dwelling, & with nothing but the said alley-way of 20 feet intervening between them; but def'ts say that it was not very soon after said purchase that s'd kitchen was so erected, but that the same was not erected before the summer of the year 1852, and about six months after the sale of said lots by Gustavus to one John Wahrenberger on Nov. 28th, 1851, or thereabouts.

And def'ts say that it is not true that very soon after the erection of the said kitchen on lot No. 7, in the year 1852, that the said Gustavus erected upon lot No. 8, immediately adjoining lot No. 7, a brewery, as alleged; but the truth is that, in the spring of the year 1853, Gustavus let said lot No. 8 to one Sittigast, who built thereon a small dwelling-house, which was built for and used by Sittigast as a dwelling-house for about 18 months as tenant of s'd Gustavus, and until the latter part of the year 1854, after which date the s'd dwelling-house was by s'd Gustavus let to other tenants, and in the year 1859 the premises
109 on lot 8 were converted into a brewery, & said business carried on thereafter by one Schneider until about the time of the death of Gustavus, as def'ts believe. And said lot was thereafter, and during her life, held by tenants of s'd Catherine.

Def'ts admit that the entire value of the three lots 6, 7, & 8, at the date of purchase of lots 7 & 8, and at the time said kitchen was erected on lot No. 7, and at the alleged date the said lots were designated for use as homestead, was not exceeding two thousand dollars.

And def'ts further say it is not true that said lots 7 & 8, from the time they were so purchased, on Dec. 16, 1850, were part & parcel of the homestead of Gustavus & Catherine, as alleged, but the truth in this behalf is that lot 7 was not used or occupied for any purpose prior to the summer of the year 1852, at which time s'd kitchen was erected thereon, when, and not before, the said lot by such use & occupation became a part of the homestead, as alleged. The beginning of which use & occupation was as aforesaid about six months after the sale of s'd lots No'. 7 & 8 by s'd Gustavus to John Wahrenberger, on
110 Nov. 28th, 1851. Nor was the lot No. 8 occupied or used for any purpose before or until the spring of the year 1853, when it was occupied as aforesaid by Sittegast. Said lot was as aforesaid by him held for about 18 months, & thereafter, by divers other tenants in succession, un*til* said Gustavus, and in the year 1859 by one Schneider, engaged thereon in the business of brewing as aforesaid, during s'd Gustavus Kirchberg's life-time. And defendants, upon their information & belief, deny that said lot No. 8 ever was by said Gustavus & Catherine, or either, held, used, or occupied as part of the homestead.

And def'ts say it is not true that s'd lots 7 & 8 continued to be part & parcel of the homestead from the date of purchase thereof, Dec.

1850, during their lives, but s'd lots were unoccupied until the summer of 1852, when lot 7 was, as aforesaid, used as alleged in the bill until the death of Catherine in 1862; the lot No. 8 never was occupied or used for any purpose until the spring of 1853, as aforesaid, and the same was therefore held and occupied by tenants of Gustavus, and from
111 1859 as brewery until his death, and thereafter, and until s'd Catherine's death, by her tenants; and so def'ts say, that further or otherwise, it is not true that lot' 7 & 8 were, from their purchase, part & parcel of the homestead of s'd Gustavus & Catherine, and so continued to be part & parcel thereof during the remainder of their natural lives, and of the life of Catherine, until her death in 1862. And def'ts submit to the court upon the facts stated herein, whether said lots, or either, were or was part and parcel of the homestead on the 28th of Nov., 1851, or theretofore, and prior to the summer of 1852, and whether the same or either were subject, under the laws of the State of Texas, to be alienated, or conveyed, or incumbered in any manner by the said Gustavus alone, without the concurrence of his wife, the s'd Catherine, in the manner prescribed by law, the said conveyance of date Nov. 28th, 1851, having been made and recorded prior to the use or occupation in any manner by said Gustavus & Catherine, or either of them, as part of their homestead.

Def'ts further answering say, that it is not a fact that said lots
112 became at their purchase, and thereafter remained, parts of the homestead, as alleged in the bill, the said Gustavus not having used or occupied the same or any part of either of said lots prior to the summer of 1852. And defendants admit that said Gustavus on or about the 28th of Nov., 1851, did assume and undertake, by his separate deed of that date, to convey the said lots 7 & 8 to John Wahrenberger, and defendants are advised and believe that on said day, by said deed, said Gustavus did convey in fee-simple the said two lots to John Wahrenberger, the said conveyance having been made prior to the use or occupation of said lots or any part thereof as part of the homestead. Defendants admit that said deed was without the concurrence of the said Catherine, and that said deed was absolute, and purporting to convey to said John Wahrenberger in fee-simple, the said lots 7 & 8, and that said deed was duly acknowledged by said Gustavus on Nov. 28th, 1851, and was recorded in the county clerk's office of Travis County, as alleged in the bill, and a copy of which is filed by complainant as
113 Exhibit A, the original of which deed will be produced and used in evidence on the hearing of this case.

And defendants further say that they are advised and believe that it is not true that said deed was or is void and of no effect as a conveyance of any interest or title in said lots 7 & 8; but they are advised and believe that said deed did, in fact and in law, convey said lots to said John Wahrenberger as against said Gustavus and Catherine, and any and all claiming through them or either, a valid title, which title created and still constitutes a bar to the recovery thereof by the complainants, who are asserting title therein; and defendants further or otherwise say, it is not true that said deed created and still constitutes a cloud upon the title of complainants and greatly embarrasses and obstructs them in the assertion of their right; and defendants submit to the court that said deed executed by Gustavus Kirchberg to said John Wahrenberger on Nov. 28th, 1851, and before the said lots were used or occupied as parts of the homestead, conveyed the title in said lots from said Gustavas, and that said conveyance is a bar to the
114 claim of the complainants herein.

And defendants, further answering, upon information and belief admit that, long after the making of said deed described in the bill as Exhibit A, and on or about the 24th day of June, 1856, the said John Wahrenberger obtained and procured another conveyance of the said lots 7 & 8, but including, also, lot No. 6, which conveyance was executed not only by the said Gustavus, but also by the said Catherine, therein styled his wife, which conveyance was a deed of trust to defendant, John B. Costa, as trustee for said John Wahrenberger, and was made, as is apparent on its face, as a security to said John Wahrenberger for the sum of $435.00, for which the said Gustavus and Catherine executed their note of the same date, due three months thereafter, which deed of trust was duly acknowledged and recorded, as alleged in the bill, which deed is described in the bill by copy filed as Exhibit B. But said deed of trust, as appears from its face, purports only to convey all their rights, title, and interest in and to the lots in the city of Austin, described as lots No. 6, No. 7, and No. 8, in said block
115 111, with the improvements belonging to the same." And defendants submit to the court that the said deed of trust so conveying their rights, &c., in said lots 6, 7, & 8, and the improvements thereon, operating as a conveyance of the lot 6, with improvements thereon, and the right of the said Gustavus and Catherine upon the improvements which by them had theretofore been erected upon lots 7 & 8, and in which they, Gustavus and Catherine, in some way had some interest, did not operate as an estoppel to the said John Wahrenberger, and those claiming under him, claiming the fee in lots 7 & 8, under the said deed, of date Nov. 28, 1851. Said deed of trust, so far as defendants know or believe, is correctly shown by said copy from the record of the same filed as Exhibit B with the bill. Defendants say they have never seen the original, and know nothing of its existence. Defendants are informed and believe that the original was surrendered by the said John Wahrenberger to said makers upon their executing their second trust-deed, as will be shown hereafter.

116 And defendants further admit that, on or about the 1st of March, 1860, nearly four years after the date of the 24th of June, 1856, the date of the former trust-deed, the said John Wahrenberger procured from the said Gustavus and Catherine another conveyance for the said lots No. 6, No. 7, and No. 8, which conveyance was also a deed of trust to the said John B. Costa, as trustee for said Wahrenberger, and was made, as is manifest upon its face, as a security for the payment of a promissory note for $496.50, executed on the same day by said Gustavus and Catherine to the said John Wahrenberger, which note appears to have been payable 12 months after date, said trust-deed including as well the lots 7 & 8 as the lot No. 6, whereon said Gustavus and Catherine resided, and not in controversy herein, but which trust-deed purported to convey all their right, title, and interest in said lots 6, 7, & 8, with improvements belonging to the same, there being at the time and subject to the transfer, the fee in lot No. 6, and some right in the improvements on lots 7 & 8, erected thereon by said Gustavus, subsequent to his transfer of the lots to the
117 said John Wahrenberger, a copy of which trust-deed is on file with the bill, and described as Exhibit C, which said trust-deed appears to have been duly acknowledged for record, and was duly recorded as stated in the bill.

Defendants admit that there is in said trust-deed a covenant for title of the lots thereby conveyed by said Gustavus & Catherine to said Costa, as trustee for said Wahrenberger, and to his assignee.

And defendants submit to the court the legal effect of said two deeds of trust, and they show to the court that the said last trust-deed was a renewal of the former trust-deed, and that said older deed of trust was by Wahrenberger surrendered to said makers upon the execution of the trust-deed, of date March 1st, 1860, which was a renewal of the first, about to be barred by limitation. Defendants will produce the original of said last-dated trust-deed, upon the trial hereof. The said two deeds, as to their contents, are shown by the copies on file with the bill, and marked "B" and "C."

And defendants admit, upon information and belief, that said
118 John B. Costa accepted the deeds of trust aforesaid, and the trusts thereby created, at the request and for the benefit of said John Wahrenberger; that no sale or attempted sale of any of said lots was ever made by said Costa, or by any one else in pursuance of said deeds of trust.

Defendants further say they are informed and believe the fact to be that after the making of said deeds of trust the indebtedness of said Gustavus & Catherine to said John Wahrenberger was fully paid off, discharged, and extinguished, by means whereof the said deeds of trust were in equity released, but they say that they are informed and believe that said indebtedness was not in fact paid until long after the death of the said Gustavus and Catherine; and defendants are advised and they submit to the court that upon the death of said Gustavus, the right and power therein confer'ed to sell was, by the laws of Texas, at an end, and that said Costa after the death of Gustavus had no power to sell or incumber said lots, nor was a release by said Costa or a reconveyance necessary

from said Trustee Costa. Defendants admit that no such release
119 or reconveyance has been made by the said Costa, and that said deeds of trust still remain of record without any entry of satistion, and defendants submit to the court to determine the question as to the effect of said records after the death of the grantees and subsequent payment of the debts secured thereby, and whether such records constitute clouds, serious or otherwise, and embarrassments upon any claim or title of complainants. And defendants submit to the court whether, by the said deeds of trust and the facts connected therewith, and stated in the bill and herein set forth and admitted, it appears clearly or otherwise that the said John Wahrenberger for many years after the making to him of said deed, Nov. 28th, 1851, recognized fully or otherwise and acknowledged the absolute right and title of the said Gustavus and Catherine in said lots 7 & 8.

Defendants admit that he dealt with said Gustavus & Catherine concerning said lots in permitting said Gustavus after said deed and in

1852 to erect a kitchen on lot 7, and permitting the erection of
120 buildings as aforesaid on lot 8, and its use by Sittegast, and *and* thereafter by Gustavus & his tenants as a brewery, and in taking said trust deed on June 24th upon all their (Gustavus & Catherine's) right, title, and interest in lot 6, 7 & 8, and in having same renewal on March 1st, 1860, said trust-deeds in absense of any other facts in the knowledge or information of the defendants appearing to be upon the rights of said parties in said lots, being upon lot 6 in fee and upon whatever of right they had in lot 7 & 8, being some kind of right in the improvements by said Gustavus erected as aforesaid upon them; and defendants submit to the court whether the said John Wahrenberger and his assignees are thereby estopped from claiming or setting up right or title in said lots 7 & 8 under the deed aforesaid of date Nov. 28th, 1851, described as Exhibit A.

And defendants say it is not true that during all the time that elapsed from the acquisition of said lots on Dec. 16, 1850, down to the death of said Catherine in 1862, s'd lots No. 7 & 8 were in the actual use, occupation, or enjoyment of s'd Gustavus & Catherine, so long
121 as they both lived, as part of their homestead; but said lots were not in any way or any parts of either of them, occupied or used by s'd Gustavus & Catherine, as part of their homestead or otherwise, prior to the erection on lot No. 7 of the kitchen in 1852. The lot No. 8 never was so used as part of the homestead.

Defendants admit that said lots were used and occupied by them, (Gustavus & Catherine,) the lot 7, from summer of 1852, and lot 8, from the spring of 1853, and until the death of Gustavus in 1861, and that thereafter s'd lots were in some manner by the s'd Catherine used, occupied, & enjoyed during her life-time until her death in 1862; the lot 7, as part of her homestead, the lot 8, during said occupation, &c., was held by tenants of s'd Gustavus & Catherine & by s'd tenants used sometimes as dwelling-house and during a part of the time, from about 1859, during Gustavus' life, as brewery; and after death of Gustavus was held by tenants of said Catherine.

And def'ts further answering say that, during all the time aforesaid from the first use and occupation of lot No. 7, in summer of 1852,
122 when the kitchen was built thereon, and from summer of 1853, when Sittegast took possession of lot No. 8, the said Gustavus & Catherine occupied, by themselves & tenants, and used as aforesaid the said lots as of their own absolute rights & property, but defendants do not know nor are they informed so as to answer as to their belief or otherwise whether such occupation and use was adverse to said Wahrenberger. Defendants are informed and believe such occupation, &c., was adverse to all others; and defendants say that further or otherwise it is not true that for all this time (from the date of the purchase, on Dec. 16, 1850, and for more than ten years thereafter) the said Gustavus & Catherine so held, possessed, occupied & enjoyed said lots.

Defendants admit that the said occupation and enjoyment of said lots was open and notorious during all the time, as herein stated, and was well known to the said John Wahrenberger during all of said time, and was never by him or any one else disturbed or de-
123 nied; but defendants do not know, nor have they information so as to answer, upon belief or otherwise, whether said Gustavus and Catherine made any claim to said lots against said John Wahrenberger, or whether any adverse claim by them was known to the said Wahrenberger other than may be the legal construction of the said trust-deeds and the actual occupation aforesaid, the defendants knowing nothing of the claims of said parties, save from their acts, and the defendants having no actual knowledge of said trust-deeds during the life-time of said parties, Gustavus and John.

And defendants submit to the court whether the title or interest conveyed by the said deed of Nov. 28, 1851, to said John Wahrenberger was precluded, barred, or divested by the adverse possession and claim as hereinabove stated, and by the force and effect of the statute of limitation, said occupation and use not having been continued for ten years; and whether said Wahrenberger's right, title, and interest in said lots was thereby revested in said Gustavus & Catherine as against said John Wahrenberger and those claiming under him.

And, further answering, defendants believe it is not true as again alleged in the bill, that the said Gustavus and Catherine had
124 the title and possession of said lots while or during the lives of

them, or either, the title having passed, as above stated, from them and never revested, as defendants are informed and so state; nor is it true that upon the death of the said Catherine the said lots 7 & 8 descended to and became the property of complainants as next of kin and heirs, there being no estate in said lots in s'd Gustavus to vest in said Catherine, nor in her to descend to her heirs, the title having been conveyed to and still remaining in the said John Wahrenberger. And, upon their information and belief, defendants say it is not true that said Wahrenberger, in disregard of the rights of complainants, conspired or confederated, fraudulently or otherwise, with any persons whatever, or with the parties, or any of them, named in the bill, to deprive complainants of their rights or property in said lots or otherwise; but they admit that he, John Wahrenberger, on or about the 4th of March, 1864, made and delivered to said James Baker, alias Kirchberg, a deed for lot 8 in said block 111.

125 Defendants deny, upon their information and belief, that it was well or otherwise known to John Wahrenberger or Baker that said Wahrenberger had no legal or equitable right or title in or to the said lot, these defendants being advised and informed and state their belief to be that at the time of his transfer to said James Baker, alias Kirchberg, he had a good and valid title in said lots No. 7 and 8.

Defendants admit that said deed from Wahrenberger to Baker, alias Kirchberg, purports, upon its face, to have been made in consideration of one dollar, which sum, it is apparent, was but a fictitious or nominal consideration, and which, if paid, and defendants do not know whether paid or not, was no real or adequate consideration for the said lot, which was then of the value of $300.00, to the best of def'ts' information and belief, and not $1,200.00, as alleged in the bill, and is now with the whole improvements upon the place of value of about $1,800.00; there being about $1,200,00 worth of improvements thereon, made by def't, Pressler, after its conveyance from said Baker; said improvements being an addition to the house—recovering the house, erecting out-houses, making cistern, fencing, porch, & other improvements of value as aforesaid of about $1,200.00 coin.

126 Defendants admit that said deed was proved up for record, and was recorded as in the bill in this behalf alleged, a copy of which deed is shown by the Exhibit D, filed with the bill.

Defendants admit that afterwards, and on the 14th day of Jan., 1868, the said James Baker, alias Kirchberg, did, by deed of that date, attempt to convey the said lot 8 to the defendant Frank Pressler, and did, by said deed, in fact convey and give possession of the same to said Pressler for an expressed consideration of $400.00 coin, a copy of which deed, marked E, is filed with the bill; and the defendant Pressler, of his own knowledge, and the defendant Weise, upon his information and belief, say that it is not true that said defendant Pressler, at and before the date of said deed, knew, or was informed, well or otherwise, that the said James Baker, alias Kirchberg, had no right or title to said lot No. 8, or that said Pressler had actual or constructive notice, other than from the recitals in the deed from Wahrenberger to said James, that he had paid nothing for it; nor was he informed, nor did he believe, that

127 said deed to James conveyed no title, nor did this defendant, Pressler, know or believe that the said Gustavus & Catherine had claimed said lots against the said John Wahrenberger, after the deed of date Nov. 28th, 1851; but defendants admit that they knew that said Gustavus & Catherine had occupied and enjoyed the same, as has been particularly set forth, as their own property. And defend-

ant Pressler says, that he purchased said lot No. 8 from said James Baker, alias Kirchberg, on the said 14th Jan., 1868, said James having possession thereof, and claiming the legal title therein in fee-simple, and conveying the said lot with general warranty to him, Pressler, for the sum of $400.00, in coin, to said James at the time paid, and thereupon possession was given under said deed; that his said purchase was made after having the title investigated, and after he had been advised that said James Baker, alias Kirchberg, could convey a good title. And said purchase was made in good faith, without notice of the claim of the complainants, or any right in the estate of the said Gustavus &
128 Catherine, or of either of them. And defendants say that said Pressler did pay to said Baker, alias Kirchberg, the consideration in said deed (Exhibit E) mentioned, in coin, prior to the delivery of said deed and the possession of said lot, paying the same in coin, and that said sum was a fair and adequate consideration for said lot. Nor is it true, as alleged in the bill, that said Pressler received or procured said deed by confederation with said James Baker, alias Kirchberg, knowing or believing that the said deed was no conveyance of title in and to said lot, nor desiring the same as color merely, or otherwise, or pretense of title, nor that he received said deed without any or more trivial consideration, or for the purpose of defrauding the complainants, or of depriving them of any right of property in said lot No. 8.

Defendants state that said deed from James Baker, alias Kirchberg, contained a general warrant of title, but they deny—the said Pressler, of his own knowledge, and Weise, on his information and belief—that such warrant was illusory, or simply or in any way designed to deceive by appearances.

129 They admit, on information and belief, that said James had no means or property whatever to make good a breach of said warranty. And Pressler admits that he well knew that such was his, James's condition, and that said warranty was no security for the title, on which account said Pressler says he was the more careful in examination of title, and took the same, relying upon its validity, and not upon expectation of relying upon warranty of said James, on eviction that said James was at the time, and had been for several years, from 1864 until said sale, in possession, under the deed above described as Exhibit D, and upon the sale to Pressler gave possession, and upon the belief in the validity of the title conveyed to him, Pressler, he paid out said sum of money, which sum was, as above stated, a fair and adequate consideration for the said lot.

Defendants admit that soon after the making of said deed, the said James left Austin and Texas, and to parts unknown to these defendants, the said James, being a journeyman printer, and of roving dispo-
130 sition, and has never returned, so far as defendants are advised and believe.

Defendant Pressler admits that he went into possession, claiming in good faith the title to said lot 8 (not under pretence of title) thus derived through the said deed, having paid in coin $400 for said lot; nor is it true that said title is a mere pretence of title, or that it was derived through his fraudulent collusion with said James, or without having parted with any fair or valuable consideration therefor.

And def't has ever since Jan'y 14th, 1868, occupied, but not wrongfully, the said lot No. 8, and has taken the rents, issues, and profits of the same, which have been worth twelve dollars, and not $50 per month, as is alleged in the bill.

And defendant Pressler says that he has erected on said lot the fol-

lowing permanent improvements, which are of the value of $1,200.00, and increases the value of the rents and income thereof, viz: Addition to the dwelling-house, out-houses, porch, recovering dwelling-house, digging, walling, plastering, &c., cistern, fencing, (cedar pickets,) fence and gates necessary, and increasing in value as aforesaid the said premises.

131 And defendants admit that the defendant Caroline was the wife of the said John Wahrenberger in his life-time; that said John departed this life early in 1864, and that she afterwards intermarried with said A. B. Newman; that after the death of said John and before her marriage with A. B. Newman, and on or about the 31st day of Dec., 1868, she made and delivered to the defendant Charles Weise, a deed in fee-simple for the lot 7, with covenant of general warranty; but it is not true, so far as defendants are informed and believe, that she made such deed knowing and believing that she had no right, title, or interest in said lot No. 7, or that she was designing to defraud complainants of any right or title therein, or that for such or any other fraudulent purpose she conspired fraudulently or otherwise or confederated with defendant Weise, but she made said deed in good faith, designing to convey title in said lot to defendant Weise; that she had possession thereof at the time and gave possession thereof to defendant Weise at the date of the said purchase and sale. The said deed was acknowledged for record, recorded as in the bill in this behalf as alleged, which deed as to its

132 contents is shown by the copy filed with the bill described as Exhibit F.

Defendants admit that said deed recites a cash consideration of $350, coin, and the said Weise, of his own knowledge, and Pressler, on his information and belief, say that said sum of $350.00, coin, was fully, in work and labor, paid by said Weise, prior to the time of his purchase. The agreement was made several months previous and def't Weise had paid said sum in labor befor' date of the deed, and had rec'd possession at the time of payment, and that said sum was a valuable and fully adequate consideration therefor; nor is it true, as in the bill alleged, that said sale was pretended, or that the conveyance was a sham or fictitious transaction between said Caroline and said Weise, nor was it a device, fraudulent or otherwise, to deprive complainants of their or any right or title in said lot No. 7, but the said deed was a bona-fide transaction between them.

And defendant Weise admits that ever since the 31st Dec., 1868, he has had possession of said lot No. 7 under said deed, but not as color or pretence, and has had and held the same, and has had the use of

133 lot No. 7, and has taken and received the rents, issues, and profits of the same, and which have been of the *sale* of from three to five dollars per month, and not ten dollars as alleged in the bill—the last two months five dollars per month; formerly rent was from $3.00 to $4.00 per month, and sometimes the lot was not rented and nothing received.

Defendants say that the actual cost value of said lot 7 at date of deed from Caroline to this defendant Weise was not exceeding $350, in coin, and not $600, as alleged, and its present value is five hundred dollars and not one thousand, as alleged.

Defendant Weise, of his own knowledge, and Pressler, on information and belief, says that it is not true that at and before the date of the said deed (Dec. 31st, 1868) the said Weise had notice or believed that the rightful title or ownership of the said lot was in the heirs of the said Catherine; but it is true that he was informed, advised, and did believe

that the title thereto was in the said Caroline or in the estate of said John Wahrenberger. Nor is it true that defendant Weise, well or
134 otherwise, 'new or believed the fact to be that for many years before the death of said Catherine, she and her husband had claimed said lot No. 7 as part of their property or homestead as against the said John Wahrenberger; they admit, however, that defendants knew that Gustavus and Catherine had occupied, used, and enjoyed said lot 7 as part of their property and homestead, not knowing or believing that such claim, use, and enjoyment was adverse to said John Wahrenberger, or that any claim adverse to said John was ever in fact set up, as alleged.

And defendants say that the said lot 7 was in fee-simple conveyed by Gustavus to said John Wahrenberger on Nov. 28th, 1851, before the same was either used, occupied, or designated as a part of the homestead of said Gustavus & Catherine, & upon the death of said John, that the estate therein was cast upon the heirs of said John, and that upon partition of said estate the said lot No. 7 was set apart to said Catherine, and that her deed to the defendant Weise, having possession thereof and delivering the same as aforesaid, conveyed title to him, and upon payment of said purchase-money and the execution of her said
135 deed to defendant Weise, without notice of any title outstanding in complainants or any claim thereto, his title became & was complete and perfect. These defendants thereupon submit to the court whether the defendant Weise by means of said deed (described as Exhibit F) did take or obtain any title or interest in the said lot 7 or against complainants.

And defendants submit to the court, whether the said deeds (with the circumstances attending the execution of them, and each stated herein to the utmost of the knowledge, information, and belief of these defendants,) are each and all of no validity, either at law or equity, to divest the said Gustavus & Catherine of all rights and title in said lots 7 & 8, and so cutting off the descent of any estate therein to the complainants, or other next of kin to the said Gustavus & Catherine; and they further submit to the court, whether said deeds described, A, B, C, D, E, & F, (the trust-deed described as Exhibit B, having, as defendants believe, been surrendered, and the trust-deed C, having been paid
136 off subsequent to the death of said Gustavus and Catherine,) are clouds upon the title of complainants to the same, or *or* mere obstacles and embarras'ments to complainants recovering and enjoyment of the lots, or whether, as defendants insist, the said title-deeds, A, D, E, & F, are not the just cause of possession by these defendants of said lots, as well against complainants as all others.

And defendants admit that Pressler, relying on the deeds, A, D, & E, and the defendant Weise, relying on the deeds described as A & F, each with'olds the possession of the lot in his possession as aforesaid, but not wrongfully as alleged in the bill; and that they take and convert to their own use the rents, issues, & profits of the same. (Pressler holding lot No. 8, & Weise holding lot 7.)

And defendants admit, that said Caroline held said lot 7 for the years '64, '65, '66, '67, & '68, and converted the rents and profits to her own use as defendants are informed; and these defendants are not informed, nor are they able to answer, as to the amount of value of such rents received by said Caroline. They also admit that she received
137 said purchase-money for lot No. 7, $350.00, and that she, claiming that the deed of Nov. 28, 1851, conveyed to said John Wahrenberger the fee in said lots, *she* has refused to account for the same.

Defendants admit that said Caroline was the executrix, (not the

administratrix as alleged,) and administered under the will the estate of s'd John; that she was also one of the devicees and distributees, and as such derived a large amount of real estate, as well as personal property, & some money; that she and her husband, A. B. Newman, are the guardians of the minors, James, Mary, & Josephine, infant heirs of said John, and who have from his estate inherited a large amount of real and person' property; that so far as they know or believe, said defendants, Caroline and A. B. Newman, nor either, have ever paid, either as guardians or otherwise, or accounted to complainants for the value of said lot No. 8, nor any of the rents, profits, & issues thereof received and converted to his own use by said John in his life-time during said years 1862, 1863, & 1864. Defendants are not informed, nor are they able to state the value of such rents or whether received by said John for said years.

138 Def'ts admit, [illegible] information and belief, that said James Baker, alias Kercnberg, has never in any manner accounted to or settled with complainants for value of lot 8 by him conveyed to def't Pressler.

Def'ts admit, on information and belief, that defendant Costa, truster in the trust-deeds described as Exhibit B & C, did not, in the life-time of said Gustavus & Catherine, recovery or release to them or either the title or interest which he took in said lots 7 & 8 by virtue of said deeds, nor has, since the death of said Gustavus & Catherine, ever so released or reconveyed to complainants.

And defendants again admit, on information and belief, that all indebtedness from said Gustavus & Catherine to John Wahrenberger has long since been fully paid off; but having been paid as aforesaid, subsequent to the death of said Gustavus & Catherine, & that by said payment the s'd trust-deed C, which was a renewal of trust-deed B surrendered as aforesaid, was thereby fully satisfied.

Defendants admit that at the death of said Catherine, on the day of , 1862, at which date all rights of property owned by

139 her descended & was cast upon her heirs, there was waged the war of the rebellion by the so-called C. S., of which C. S. the State of Texas was part; that the complainants, if residents of the loyal States, and upon information and belief defendants admit that they did so reside in the loyal States, they could not take possession of lot' 7 & 8 even if they had owned them, nor could they otherwise look after and protect any rights and interest therein until after the close of the said rebellion; admit that after the death of the said Gustavus & Catherine, the said John Wahrenberger took and obtained letters of administration upon their estate, and upon the death of said John Wahrenberger the defendant Caroline became adm'x de bonis non, whereby she obtained possession in her *judi*ciary capacity of all the property of the said Gustavus & Catherine; but defendants deny that she or the said John Wahrenberger obtained possession of said lots 7 & 8 in their *judi*ciary capacities.

Defendants admit that the administration of the estate of said Gustavus & Catherine, has been closed in the county court of Travis County.

140 Defendants do not know, nor have they any information so as to be able to answer as to their belief or otherwise, whether complainants, by means of correspondence through their att'ys, sought diligently or otherwise to acquire information as to their rights or interest in the estate of said Catherine.

Defendants admit that upon discovering their supposed rights in said

lots 7 & 8 they sued out a patent for the lots 7 & 8 from the general land-office of the State of Texas, which patent issued under the rules of said office to the heirs of said Gustavus Kirchberg, and is on file with the bill.

And defendants submit to the court whether said patent, under the laws of Texas, issued as aforesaid to the heirs of Gustavus, yet accrued to the complainants by inheritance from the said Catherine, or whether said patent accrued to these defendants holding title under and through the said Gustavus as aforesaid—

Admit that complainants, relying upon the said patent and their claim of title as set out in the bill did, on February 12, 1869, bring their suit of trespass to try title for the recovery of said lots on the law side
141 of this court and against these defendants Pressler and Weise, (said Weise being styled Weiser in said suit.) That said action of trespass to try title came to trial in this court on the law side on or about the 24th day of June, 1869, on which trial the defendants therein introduced in evidence and relied upon the absolute deed of date Nov. 28th, 1851, and described in the bill, from said Gustavus to said John Wahrenberger; and that complainants, the plaintiffs in said suit, proposed to introduce as evidence the said deeds of trust (Exhibit B & C) for the purpose of affecting the validity of the defence; and the court held that the same were inadmissable as evidence in the suit at law, and the s'd deeds of trust were excluded; that under the evidence as allowed to go to the jury, and under the instructions of the court, based thereon, there was a verdict in favor of these defendants and against complainants, (therein the pl'ffs,) upon which verdict a judgment was rendered that the pl'ffs take nothing by their suit as against defendants, & that they recover of pl'ffs all costs of suit.

And defendants submit to the court that, said judgment remaining unreversed nor appealed from so rendered in the case,
142 putting in issue the same subject-matter and issues as in this suit, is a bar against the cause of action set forth.

And the defendant Pressler submits to the court that he, on Jan'y 14th, 1868, for a valuable consideration, bought said lot 8 from said James Baker, alias Kerchberg, said James at the time being seized in and having the possession of said lots, & holding the same under deed in fee-simple, & claiming the same; and that on said Jan'y 14, he, defendant Pressler, paid over to said James said sum, upon which payment the said James executed & delivered said deed in fee simple, conveying said lot No. 8 to defendant, and at same time delivering possession thereof, the defendant at the time and prior thereto having no notice, actual or constructive, of any right of the claimants in the said lot; that the patent issued on 11th Feb'y, 1869, related to the date of the deed from Gustavus to John Wahrenberger, of date Nov. 28th, 1851, wherefore the said Pressler holds said lot 8, in block 111, under deed in fee-simple, for valuable consideration, in fact paid before the delivery of the deed to him and without notice, & so is a bona-fide purchaser, and
143 as such claims and asks the protection of the court for his title; and the def't Weise believes said defense interposed by Pressler to be true.

And def't Weise submits to the court that, being a carpenter by trade, he, during and in the years 1867 & 1868 *he* labored at his trade for s'd Caroline, and in part pay therefor, in 1867, he agreed to take s'd lot 7, at the price of $350.00, coin, she agreeing to make a good title therefor; that long before the date of said deed he had done and performed for her work to the amount of $604.00 or thereabout, in coin,

and the execution of the deed had been delayed on account of there not having been a partition between s'd Caroline & the minor heirs aforesaid; that at and about the date of s'd deed, Dec. 31st, 1868, the purchase-money having been fully paid as aforesaid, she being in possession and claiming s'd lot, put this defendant in the possession thereof and executed and acknowledged for record the said deed, described as Exhibit F, with warranty, she to secure on the partition the title to said lot as against the said minors James, Mary, and Josephine.

144 That said partition was duly made & *and* approved by the hon. county court at its September term, 1869, (on Oct. 1st of s'd year,) and so def't shows to the court that he bought s'd lot 7 from s'd Caroline, then in possession thereof and claiming the same, for the s'd sum, $350.00 in coin, paid in work & labor done as aforesaid, before the delivery of possession, a full consideration therefor, and received deed from her, the same being by her executed and acknowledged on Dec. 31st, 1868, conveying s'd lot to him in fee-simple, the def't having had no notice, actual or *instructive*, of any of the complainants or of any one else in & to s'd lot as against the title so by him brought, and so he is a bona-fide purchaser for adequate and valuable consideration, paid before the delivery of possession & execution of the deed therefor, and therefore asks the protection of the court as such. And def't Pressler believes the truth of the defense of innocent purchaser so interposed by the def't Weise.

145 And defendants, to the best and utmost of their knowledge, information, and belief, to said interrogatory No. 1 answer as follows:

That they have no knowledge or information other than in the bill, and in the proceedings had by complainants on the law side of this court, against def'ts, Pressler & Weise aforesaid, and in the probate court of Travis County, in the matter of the estate of Gustavus & Catherine, whether, and cannot set forth, upon belief or otherwise, whether in 1838 or 1839, or at any other time, the said Gustavus & Catherine were legally married, in Philadelphia or elsewhere, or whether her maiden name was Wolf, or whether her first husband was by name of Block, nor whether thereafter said Gustavus and Catherine lived and cohabited together, in Philadelphia or elsewhere, as husband & wife, until the year 1849. Def'ts say the' are informed and believe that, in or about the year 1849 they emigrated to and settled in Austin, in Texas, and that thenceforward there continued to live and cohabit together as husband and wife, until the death of Gustavus; but this living together was, as def'ts have been informed & believe, *was* not continuous in

146 said relation, but was interrupted by domestic broils, in which troubles and at the said times it was often made known and stated by the said parties that they were not legally married, but were and had been living together without marriage; which statement was also made by Catherine, and in last illness, to her spiritual adviser and attendants, as def'ts have been informed and believe, and the said Gustavus departed this life in Travis County, on the day of , 1861, intestate; that it is true, as def'ts have been informed and believe, that said Gustavus & Catherine had no child or children, and that on the day of , 1862, the said Catherine also died, in said city of Austin, intestate, and without having taken any other husband since the death of Gustavus, or leaving issue. Def'ts don't know, so as to answer, as to father or mother surviving.

Defendants do not know nor are they informed, save by the bill & by the proceedings by complainants had in the probate court of Travis

County, and on the law side of this court, and they are unable to answer, as to belief or otherwise, whether complainants are next of kin and entitled to inherit the estate of said Catherine.

147 Defendants admit that it is true that, at a Government sale of Austin City lots, said Gustavus bought lots 7 & 8, in block 111, in said city, and that his purchase thereof was duly entered in his name on the records and maps of the general land-office.

That at the date of said purchase Gustavus & Catherine resided upon lot 6, and having their dwelling-house upon the extreme back or rear edge of lot 6, in said block 111, so that an alley-way, 20 feet only, an interval between the dwelling & the lot 7, as shown in the sketch in the bill.

That previous to the purchase of lots 7 & 8 Gustavus and Catherine had no kitchen or other tenement upon lot No. 6, (except perhaps a shop on the front of the lot,) or other tenement except their dwelling as aforesaid. Def'ts do not know, nor are they able to answer, as to their belief or otherwise, whether the purchase and acquisition of s'd lots 7 & 8 was made with the intention or for the purpose of designating or using them as parts of the homestead.

148 Def'ts admit that afterwards, but not until the summer of the year 1852, the s'd Gustavus erected upon the extreme rear end of lot No. 7 their kitchen, placed just in the rear of their dwelling, & with nothing but the 20-feet alley intervening; that soon after the erection of the kitchen, s'd Gustavus let the lot 8 to one Sittegast, who built a small house thereon, in which he resided for about 18 months, when it was surrendered to s'd Gustavus, after which it was let to one Schneider, & used by him as a brewery, & held by Gustavus and his tenants during his life; and further and otherwise, it is not true that immediately after the purchase the lot 8 was used as a part of the homestead and occupied by Gustavus and Catherine.

It is true that s'd lots did not exceed the value $2,000 at the time inquired of by the bill. Def'ts say, upon their information & belief, that it is not true that the said lots 7 & 8, from the time they were so purchased, on Dec. 16, 1850, were part and parcel of the homestead of the said Gustavus & Catherine, but s'd lots were vacant, as to houses, and unoccupied, and unused, until as aforesaid, the lot 7, in summer of 1852, when the kitchen was erected, and lot 8, until the spring or sum'er of 1853, when the said Sittegast built his dwelling

149 thereon, as tenant of Gustavus. And def'ts believe that the lot 8 never was, at any time, by use or occupation or otherwise, part of the homestead of Gustavus and Catherine, or either, but was used & held by tenants; after Sittegast left, was used as a brewery, and at times, only, as dwelling-house. The lot No. 7 was used and occupied as part of the homestead, from and after the summer of 1852, during the remainder of the lives of Gustavus & Catherine, and of s'd Catherine, who di'd, as aforesaid, in 1862. The lot No. 8 was held and used by tenants of s'd Gustavus from and after the spring or summer of 1853, during his life, and by Catherine and her tenants, after his death and during her own life, and not as part of homestead, as alleged in the bill; was used part of said time as dwelling-house by such tenants, and part of the time as a brewery, which business may have been properly owned by s'd Gustavus, but the management and control of the same was in the s'd Sch*edule*, as def'ts believe.

It is true that on Nov. 28, A. D. 1851, the s'd Gustavus Kirchberg did assume and undertake by his seperate deed of that date

150 to convey the s'd lots to the said John Wahrenberger, dec'd, and

that on s'd day did, without the concu'rence of the said Catherine Kirchberg, execute and deliver to s'd John Wahrenberger an absolute deed, purporting to convey to him, the said John Wahrenberger, in fee-simple, the said lots 7 & 8, and that said deed was duly acknowledged & recorded, as in the bill is alleged, in this behalf, which deed, so far as def'ts know or are informed or believe, was and still is valid as a transfer in fee-simple of said lots.

Upon information, they believe that, on June 24th, 1856, said John Wahrenberger obtained and procured another conveyance of said lots 7 & 8, which was executed not only by the said Gustavus, but also by said Catherine, and which was a deed of trust to John B. Costa, as trustee for said John Wahrenberger, & was made, as appears upon its face, as security to said John for $435, for which Gustavus & Catherine had executed their note of same date, due three months thereafter, which was also acknowledged & recorded as is alleged in the bill. This deed
151 of trust, however, was for the right, title, and interest of them (the said Gustavus & Catherine) in and to lots 6, 7, & 8 in block 111, and the improvements thereon. Def'ts refer to s'd exhibit for more full statements as to contents, &c.

That, on March 1st, 1860, said John Wahrenberger procured from said Gustavus & Catherine another conveyance for the lots 6, 7, & 8, in terms and as to conditions substantially as the first trust-deed, & was made, as appears on its face, as a security for the payment of a promissory note for $496.50, executed on same day, and payable 12 months thereafter, which was acknowledged for record & recorded as alleged in the bill.

That, by inspection, it appears that s'd Gustavus & Catherine covenanted to warrant the title of the s'd lots thereby conveyed to Costa as trustee for said Wahrenberger and to his assignees.

That s'd Costa occupied said deeds of trust, as def'ts are informed and believe, and the trusts thereby created, at the request of said John Wahrenberger, and for his benefit; that no sale, or attempted sale of either of said lots was made by said Costa, or by any one else,
152 under or in pursuance of said deeds of trust. Def'ts admit, upon information and belief, that all indebtedness of the said Gustavus and Catherine was satisfied, but such payment was made after the death of said Gustavus & Catherine.

Def'ts are informed and believe that no release or reconveyance has ever been made by said Costa, and that said trust-deeds still remain of record, without any entry of satisfaction.

Def'ts are advised and believe that the first trust-deed was surrendered to said Gustavus & Catherine upon their executing the deed of date 1st March, 1860, believing that the said second trust deed & note therein recited was a renewal of the former note & security. And they are informed and believe that, after the death of the makers of the trust-deed, the payment and satisfaction of the debt fully released the land, and they are advised that such payment rendered said trust-deed of no effect, and that the same would not constitute any incumbrance upon a title otherwise good.

And def'ts having answered and set forth, as fully as they can upon their knowledge, information, and belief, as to the said two deeds of trust and the acts of said John Wahrenberger & the s'd Gustavus
153 & Catherine about the said lots, submits to the court to determine the result of the facts as by them stated & set forth, whether said Wahrenberger, for many years, or for any time, and notwithstand-

ing the said deed, Exhibit A, fully or otherwise acknowledged the absolute right or title of said Gustavus & Catherine in said lots 7 & 8.

That said Wahrenberger dealt with said Gustavus & Catherine concerning said lots, in receiving for his benefit the said two deeds of trust conveying all their (Gustavus & Catherine) right, title, and interest in said lots 6, 7, & 8, in block 111, in permitting the said kitchen to be built on lot 7, after the purchase, and in permitting its use thereafter, and in permitting the erection, by Sittegast, under said Gustavus, of the house on lot No. 8, and permitting him to occupy the same during the term of 18 months, or about said term, and thereafter, by said Gustavus & his tenants until his death, & by Catherine during her life.

That it is not true that during all the time, from their first acquisition of s'd lots 7 & 8, on Dec. 16th, 1850, down to some time in the year 1862, were in the actual use, occupation, and enjoyment of the said
154 Gustavus and Catherine so long as they both lived, as part and parcel of their homestead; but def'ts are informed and believe that the said lots were not used, occupied, or enjoyed in any way. The said lot 7, prior to the erection thereon of the kitchen in summer of 1852, after the sale to Jno. Wahrenberger, after which said kitchen was used as part of the homestead, and the lot 8 prior to summer of 1853, when and afterward it was used, but not as part of the homestead, but by s'd Sittegast, for about 18 months, and thereafter by other tenants of s'd Gustavus; and def'ts say that said Catherine, after the death of said Gustavus, used, occupied, and enjoyed said lots as Gustavus had been doing, and until her death, in 1862.

That it is not true that, during all the period as alleged in the bill, and for more than 10 years, s'd Gustavus & Catherine so held, occupied, or enjoyed said lots 7 & 8, as of their own absolute property adversely to s'd John Wahrenberger, notwithstanding said deed of Nov. 28th, 1851, and adversely to all others; but def'ts admit that,
155 from the summer of 1852, said lot 7 was occupied, possessed, held, and *occupied* by said Gustavus & Catherine, adversely to all others. Def'ts do not know, nor have they information so as to answer as to belief or otherwise, whether such occupation, use, and enjoyment was adverse to said Wahrenberger. Likewise lot 8 was held, enjoyed, used, and possessed by said Gustavus & Catherine, by their tenants after the summer of 1853, as above stated; but def'ts are also unable to answer whether adverse to said Wahrenberger. They are informed and believe it was adverse to all others.

Said occupation and enjoyment of said lots was open and notorious during all the time so occupied and was well known to said Wahrenberger during all the time of such use and occupation. Def'ts do not know, nor are they able to answer, whether during said time the said Gustavus & Catherine claimed s'd lots adversely to s'd Wahrenberger, nor were they by said Wahrenberger or any one else disturbed or denied.

Def'ts are advised and believe that the use and occupation by said Gustavus & Catherine was not continued for a sufficient length
156 of time to revest title in them to said lots by virtue of the laws of limitation of the State of Texas.

Def'ts say it is true, as they are informed and believe that after the death of said Gustavus & Catherine, and on or about first of March, 1864, the said John Wahrenberger made and delivered to one James Baker, alias Kerchberg, a deed for lot 8, in block 111, but def'ts are informed and belief that said deed was not made in disregard of the rights of complainants, or that said John Wahrenberger conspired,

fraudulently otherwise or confederated, with said *Black* or any others to deprive complainants of any rights or property; and these def'ts believing that said lots had become the property of said John Wahrenberger, and that complainants had no right therein, nor have def'ts any information as to any knowledge or belief by s'd John Wahrenberger and Baker that said Wahrenberger had no legal or equitable right or title in said lots.

It is true that said deed purports to be in consideration of one dollar, which was, it is apparent, but a fictitious or nominal consideration, and one which, if even paid, was no real or adequate consideration
157 for said lot, which was then worth about $300.00 *dollars*, now worth with the improvements about $1,800.00, of which about $1,200.00 is improvements made by def't Pressler, and not $2,500.00 as alleged; that said deed was proved up for record & recorded as in the bill is alleged; that said Baker, alias Kirchberg, on 14th January, 1868, by deed of that date, attempt to and did, as def'ts believe, convey to def't Frank Pressler said lot No. 8 for an expressed consideration of $400.00. Defendant Pressler, answering as to his own knowledge, and Weise upon information and belief, say it is not true that Pressler, at and long before the date of his purchase, January 14th, 1868, well or otherwise knew or believed the fact to be that said James had no right or title to said lot. It is true that Pressler had noticed that s'd James had paid no valu'ble or adequate consideration therefor; but it is not true that Pressler knew or believed that the deed from said John Wahrenberger to said James conveyed no title; that Pressler knew that Gustavus & Catherine had occupied and enjoyed said lot, by their
158 tenants as aforesaid, down to their death, as their own property. Pressler did not know of the said Gustavus & Catherine claiming said property adverse to said John Wahrenberger; that s'd Pressler did actually pay to said James at the time of s'd conveyance $400, coin, and was placed in possession of s'd lot No. 8 by s'd James, which sum was an adequate and fair price therefor at the time, believing that said deed was a valid conveyance of s'd lot. It is not true, as alleged, that Pressler desired said deed as color, merely, or in any other way or pretence of title, nor that he procured or received the same by confederation with s'd James without adequate consideration or for the purpose of defrauding or depriving complainants of any rights or property in said lot.

Def'ts say that the covenant of warranty was not illusory or designed to deceive by appearances, (fair or otherwise.) It is true that s'd James had no means or other property within the knowledge of def'ts to make good a breach of s'd warranty, & Pressler knew that said warranty was no security for the title, nor did Pressler buy upon such security, but relying upon the validity of the title received, well knowing
159 if the title failed *and* the warranty would not afford adequate security; that s'd James soon thereafter left the State, and his subsequent whereabouts are not known to deft's.

Def'ts deny Pressler's obtaining said deed through any fraud or collusion with s'd James without a fair, adequate, & valu'ble consideration.

It is true that under s'd deed & ever since 14 Jan'y, 1868, he has occupied said lot, but not wrongfully, and he has taken the rents, profits, and issues of the same, which have been worth about twelve dollars per month, and not $50, as alleged.

It is true that s'd Caroline Newman was the wife of s'd John Wahrenberger; that he di'd in 1864, and that she afterwards intermarried with

def't A. B. Newman; that, after the death of said John, and before her intermarriage with said A. B. Newman, she, on or about the 31st Dec., 1868, executed and delivered a deed in fee-simple, with covenant of warranty, to said Weise for lot No. 7.

It is not true, so far as defendants believe or are informed, that at said time, or at any time prior thereto, s'd Caroline, while a
160 widdow, knew she had no right, title, or interest in s'd lot, or that she conspired, fraudulently or otherwise, or confederated, with Weise with any design to defraud complainants of any right or title in said lot; s'd deed was acknowledged for record and recorded as alleged in the bill.

Defendant Weise, answering of his own knowledge, and Pressler on information and belief, says that s'd Weise worked for the def't Caroline during about 16 months, with intervals, & including the year 1868, at his trade of carpenter; that, by agreement made in the year 1867, he was to take the lot No. 7 in part pay for his labor, at the said price of $350.00, coin valuation; that his labor done for her prior to Dec. 31st, 1868, was about $604.00, coin; that the deed, by their first agreement, was to be made soon as s'd Caroline could, and it was delayed on account of her desire to have partition made with the minors, James, Mary, and Josephine, so that the lot should, without any incumbrance, be conveyed; that possession of s'd lot was, by s'd Caroline, given to def't Weise at or about the date of the execution of the s'd deed; that, on Dec. 31st, 1868, s'd Caroline having been paid in full
161 s'd sum, executed and acknowledged her deed as alleged in the bill, and gave possession of the s'd lot to def't Weise, who has had and held the possession from that date up to the present, under said purchase, payment, delivery of seizure, and deed; that s'd sum ($350.00) was a full and adequate consideration for s'd lot at the date of the deed.

Def'ts deny that s'd sale was a sham or fictitious transaction between Caroline & Weise, nor was it a device, fraudulent or otherwise, to deprive complainants of any rights in said lot.

Def'ts further state that said Caroline, being entitled to a large share of the lands and property of her said deceased husband, Jno. Wahrenberger, agreed to sell said lot before partition, and after some delay did execute the deed as aforesaid before said partition was made, with the intention that she would secure the lot, and have the same set apart to her share in s'd partition; that afterwards, and on Oct. 1st, 1869, by decree of the probate court of Travis County, (called the county court,) by report of commissioners duly appointed and acting, and report confirmed on said 1st day of October, A. D. 1869, *no* said
162 lot No. 7 was set apart to her, the said Caroline, and her title so made perfect accrued to the benefit of s'd Weise, under his warranty therefor, from s'd Caroline. Under s'd purchase & deed the def't Weise, as aforesaid, has had possession, and has so held the possession, of the lot No. 7, but not under color or pretense, but in good faith, believing that his title thereto was good, receiving and taking the rents and profits thereof, which rents have been from three to five dollars per month the last two months; at $5.00 previously, when rented def't receiving sometimes three & sometimes four dollars per month, and at times not rented, and receiving nothing. Def't has no book-account of the rents rec'd, and cannot set out further, or with accuracy, the rents rec'd; that at no time since his possession has s'd lot been worth $10 per month, as alleged.

Def'ts say that the cash value of s'd lot 7 at Weise's purchase, and

when he rec'd his deed, did not exceed $350.00 coin, nor is its present value greater than about $500 coin.

Def't Weise denies (Pressler believing the denial) that at or
163 before the payment by him, as aforesaid, or before the execution of s'd deed, & he had notice that the rightful title and ownership of s'd lot was in the heirs of Catherine Kirchberg, or that they, or any one else, set up any real or pretended claim against the right of s'd Caroline & the s'd minors, but he believed the title he rec'd to be good, and when followed by the partition as aforesaid to be perfect. Def't Weise knew that for several years before the death of s'd Catherine, she and Gustavus had occupied, used, and enjoyed said lot as part of their property and homestead. Def't did not know of Gustavus & Catherine claiming the same adverse to s'd John Wahrenberger. The said Gustavus & John were intimate personal friends, and def'ts do not believe that such, or any, adverse claim was made by them, or by either of them.

It is true that said Pressler, under the deed of date Jan'y 14, 1868, holds lot No. 8, and Weise, under said deed 31 Dec., 1868, hold lot 7, and each def't takes and converts to his own use the rents, issues, and profits of the lot so held by him, and that the possession thereby of both of said lots is withheld from complainants, but not wrong-
164 fully; that said Caroline Newman, claiming ownership of lot No. 7 in the estate of John Wahrenberger, under said deed of Nov. 28, 1851, and in herself, under her said husband, has still refused to account or pay over to complainants any of the proceeds, rents, issues, or profits of s'd lot 7. Def'ts know she received $350 for said lot 7, and had the use of the same prior thereto, as alleged in the bill, but def'ts estimate the value of said lot during said years as not exceeding $36 per annum.

That it is true that said Caroline and said minors, James, Josephine, & Mary Wahrenberger derived much property, real and personal, from the estate of said John, and that Caroline and A. B. Newman, are the guardians of said minors.

It is true, to information and belief of def'ts, that said Caroline and A. B. Newman, have not, nor either of them, in their own behalf or as guardians of s'd minors, paid over or accounted in any way to complainants for any value of lot 8, conveyed by said John, prior to his death, to said James Baker, alias Kirchberg, nor any of the rents, issues, or profits of said lot for the years '62, '63 & '64. Def'ts are informed and
165 believe that said James Baker, during part of this time had the possession of s'd lot No. 8, & that said John never did during such time receive any rents therefrom; but that said James held and received profits and rents therefrom while having such possession; but def'ts cannot say what part of the time held by John, and what by said James Baker. Def'ts estimate of the an'ual rents for said years at not exceeding sixty dollars.

Def'ts do not know, but their impression and belief is, that said Baker never in any way accounted to or settled with complainants for the value of said lot No. 8, nor for such rents as he may have received. That Costa, trustee, has never released or reconveyed said lots in the lifetime of Gustavus & Catherine, nor has he so done since their death, to complainants. Def'ts are informed and believe that said debt secured by said trust-deeds has been paid off since the death of the said Catherine, and that by such payment the deed of trust of date March 1, 1860, was fully satisfied. Def'ts are informed and believe that said deed
166 of June 24, 1856, (Exhibit B,) was surrendered at the time the second trust-deed was executed, 1st March, 1860.

That the war of the rebellion was waged at time of Catherine's death, in 1862, by the State of Texas, as one of the C. S., and that in con-*vey*ance thereof citizens of the loyal States, of which def'ts are not informed so as to admit, could not take possession of any of their property or otherwise look after and protect their rights and interest in the same, until after the close of the same, and that said complainants, if as alleged, they wer' citizens of said loyal States, they could not look after any interest in said lots. That after the death of said Gustavus and Catherine, the said John Wahrenberger administered, in Travis County, upon their estate, and after the death of said John, the def't Caroline became adm'x de bonis non of said estates.

Def'ts deny, upon information and belief, that said John, and afterwards said Caroline, obtained possession, in their fiduciary *possession*, of said lots, or that by such administration they were enabled to
167 control or dispose of them in any fraudulent manner as alleged in the bill. The administration has been closed in said county court.

Def'ts know nothing of the means resorted to by complainants to ascertain their rights or interests in the estate of said Catherine. Said complainants, by their att'ys, did procure the patent as alleged in the bill.

It is true that on February 12, 1869, complainants, relying on said patent & the title as alleged in the bill, brought suit in the law side of this court against them, def'ts, as alleged in this behalf in the bill, and that on Jan'y 24, 1869, s'd cause came on for trial, and def'ts introduced in evidence and relief on the said absolute deed of date Nov. 28th, 1851, from Gustavus to John Wahrenberger, and that complainants for the purpose of showing the invalidity of said deed proposed to introduce in evidence the deeds of trust, Exhibits B & C, which were excluded, the court holding that they were inadmissable as evidence in the suit at law.

That under the evidence as adduced and allowed to go to the
168 jury & the c'arge of the court based thereon, submitting the questions of heirship of complainants, and the marriage of said Gustavus and Catherine, and whether on Nov. 28, 1851, the date of said deed, (Ex. A.,) the lots 7 & 8 formed any part of the homestead of said Gustavus & Catherine, there was a verdict in favor of defendants & a judgment rendered thereon that the pl'ffs take nothing by their suit & defendants recover their costs.

And these defendants deny all and all manner of unlawful combination in said bill charged, without that any other matter or thing material for them to make answer unto, and not herein sufficiently answered, avoided or denied, is true to the knowledge or belief of these defendants. All of which matters and things these defendants are ready to aver and prove as this court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

F. PRESSLER.
K. WEISE.

BOWERS & WALKER,
Solicitors for Def'ts.

169 STATE OF TEXAS,
County of Travis, ss:

On this 5th day of September, A. D. 1870, before me personally appeared the above-named Frank Pressler and Charles Weise, who, being sworn, say that they have heard read the above joint and several answer subscribed by them, and know the contents thereof, and that the

same is true of their own knowledge except as to the matters which are therein stated to be upon information or belief, and as to those matters they and each of them believe it to be true.

Subscribed and sworn to before me this 5th day September, A. D. 1870.

WESTON ROUAND,
U. S. Commissioner, West Dist. Texas.

170 The answer of John B. Costa is endorsed—"Filed Sept. 5th' 1870, at rules. M. Hopkins, clerk."—and is in words, to wit:

Answer of John B. Costa.

In the circuit court of the United States for the western district of Texas, at Austin.

LOUIS GROZHOLZ AND OTHERS *vs.* CAROLINE NEWMAN & OTHERS. } No. 53. In chancery.

The answer of John B. Costa, one of the defendants to the bill of complaint of Louis Grozholz, Christina Grozholz, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, Wilhelmina Eggert, Reuben A. Harwick, Amanda Harwick, Henry Stauffer, Emeline B. Stauffer, J. D. Bietel, Charlotte Bietel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kaemerer, Simon K. Gross, (guardians of Emma Catherine Gross,) Penrosa F. Eisenbrown, Matilda Steinbacker, William Eissenbrown, complainants.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereunto saith it is true, as alleged in the bill, that on June 24, 1856, the said John Warenberger obtained and procured a conveyance of the said lots 7 & 8, in block 111, in the city of Austin, the subject-matter of this suit, to be executed by said
171 Gustavus Kirchberg and his wife Catherine Kirchberg, which conveyance was a deed of trust to this def't, as trustee for said John Wahrenberger, and was made as a security to s'd John Wahrenberger for the sum of $435.00, for which they, Gustavus & Catherine, executed their note of same date, and due three months thereafter, which conveyance was duly acknowledged for record and recorded as in the bill is alleged. But said deed of trust included the lot No. 6, as well as lots 7 & 8, in said block No. 111—the Exhibit B, filed with the bill is a copy from the records—the original of said trust-deed was never placed in the hands of def't, but was recorded by s'd Wahrenberger, and def't is informed and believes that the original was surrendered by s'd John Wahrenberger to the s'd Gustavus, upon the execution of the trust-deed of March 1st, 1860, hereinafter described.

Def't says it is true that nearly four years after the making of said deed of trust, (Ex. B,) and on the 1st March, 1860, the said John Wahrenberger procured from the said Gustavus & Catherine another conveyance for the lots 6, 7, & 8, which conveyance was also a deed of trust to this def't as trustee for said John Wahrenberger, and was made security for the payment of a promissory note for $496.50, exe-
172 cuted on the same day by said Gustavus & Catherine to the said John Wahrenberger, which note was a renewal of the former note secured by the deed of trust, (Ex. B,) the deed of trust being renewed at the instance and request of Wahrenberger, and the extension

of time made at instance of Gustavus, and said note was due twelve months thereafter, which deed of trust included the homestead of said Gustavus & Catherine. Said deed of trust was acknowledged for record and recorded as is alleged in the bill in this behalf.

Def't says it is true that he accepted the deeds of trust aforesaid, not, however, ever having had the possession and custody thereof; but def't was requested by said Wahrenberger to act as trustee in each case, and so consented, and knew that the deeds were executed to him. His information and belief is that Wahrenberger retained them and had them recorded; that the first deed of trust was surrendered upon the execution of the second.

Def't accepted the trusts created thereby at the special request and solicitation of said John Wahrenberger, and for his benefit.

Def't says that no sale or attempted sale of any of said lots was ever made by him or by any one else in pursuance of said deeds of trust.

173 Def't is informed and believes that after the making of said deeds of trust, but after the death of said Gustavus & Catherine, all their indebtedness to said John Wahrenberger was fully paid off and discharged and extinguished.

Def't has never been called upon by any person to execute said power, or, since the payment of said debt, by any one to release or reconvey said lot 6, 7, & 8; admits that no release or reconveyance has ever been made by him, and that s'd deeds of trust still remain of record without any entry of satisfaction.

Nor did def't in the life-time of said Gustavus & Catherine release or reconvey to them or either of them the title or interest he took in said lots 7 & 8, by either of said deeds of trust, nor has he since their death ever so released or reconveyed to complainants or to any one else; and that his information and belief is that all indebtedness from Gustavus & Catherine to said John Wahrenberger has been paid off and the deeds of trust fully satisfied.

And this def't submits to the court that he has no interest in the matters of controversy. And he submits to the hon. court to order what may be his duty herein. If any estate remain in him he is desirous of being discharged therefrom, and is ready to release or reconvey to s'd complainants, or otherwise, as may be ordered by the court.

174 And this defendant denies all and all manner of unlawful combination & confederacy wherewith he is by the said bill charged, without this that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, or avoided, or denied, is true to the knowledge or belief of this defendant. All which matters and things this def't is ready and willing to maintain and prove as this hon. court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

BOWERS & WALKER,
Solicitors for Def'ts.

STATE OF TEXAS, *County of Travis, ss:*

On this 5th day of September, A. D. 1870, before me personally appeared the above-named John B. Costa, and made oath that he has read the above answer subscribed by him, and know' the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein related to be on his information and belief, and that as to those matters he believes it to be true.

JOHN B. COSTA.

Subscribed & sworn to before me this 3rd day of Sept., 1870.
WESTON ROUAND,
U. S. Commissioner, West. Dist. Texas.

175 And afterwards at rules, Oct. 3d, 1870, came the complainants and filed their replication, which is endorsed, to wit: "No. 53, chancery. Louis Grosholz and others vs. Caroline Newman and others. Replication of complainant, filed Oct. 3d, 1870. M. Hopkins, clerk," and is in words to wit:

In chancery. In the circuit court of the United States for the western district of Texas, at Austin.

LOUIS GROSHOLZ AND OTHERS, PLAINTIFFS,
vs.
CAROLINE NEWMAN AND OTHERS, DEFENDANTS.

The plaintiffs in this cause hereby joins issue with the defendants, Caroline Newman and her husband, A. B. Newman, in their own behalf, and as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, minors, heirs at law of John Wahrenberger, deceased, and with the defendants Frank Pressler and Charles Weise.
ROBARDS & JACKSON,
Sol's for Pl'ffs.

And the same was entered of record on the October rule day, at is appears of record.

176 And afterwards the following agreement was filed:

Circuit court U. S. In chancery.

GROSHOLZ ET AL.
vs.
NEWMAN ET AL. } No. 53.

It is agreed that either complainants or defendants shall have until the rule-day in May next to take testimony in the above cause, when the testimony must close and the cause set down for hearing at a day to be set by the court, June term, 1871.

It is further agreed that either party can present to the other direct interrogatories, which shall be crossed in five days from such presentation, and the testimony of the witnesses named may be taken on the same before any notary public, or other officer authorized to take depositions, without commission, and returned in accordance with the State practice.

ROBARDS & JACKSON,
For Compl'ts.
BOWERS & WALKER,
For Defendants.

On the 2nd day of December, A. D. 1870, interrogatories and cross-interrogatories to the Reverend W'm M. Baker, witness for the defendants, was filed, and on the same day commission and copies of int'g's were issued, and the deposition returned and is endorsed, to wit: "Louis Grozholz et als. vs. Caroline Newman et als. 53."

177 (And endorsed:) "Deposition of Rev. W'm M. Baker. No. 53. Chancery. Directed to the clerk of the circuit court of the United States for the western district, Austin, Texas.

"Received this package from the hands of E. W. Allen, the officer before whom the depositions were taken.

"E. P. WATERS,
"*Cl'k for Postmaster for Zanesville, Ohio.*

"Depositions sealed up, addressed, and transmitted by me.

"E. W. ALLEN,
"*Clerk Court Common Pleas Muskingum County, Ohio.*"

(And endorsed:) "Received from post-office at Austin, and filed December 21, 1870.

"M. HOPKINS, *Clerk.*"

(Endorsed:) "Opened by order of court, January 2d, 1872.

"M. HOPKINS, *Clerk.*"

Which said deposition, interrogatories, cross-interrogatories, and commission are in words to wit:

178 *Deposition of Rev. W'm M. Baker.*

United States circuit court, western district of Texas, at Austin, sitting.

The President of the United States, to any judge or clerk of a court of record having a seal, greeting:

Know ye that, reposing trust in your integrity and fidelity, we have, and by these presents do nominate, constitute, appoint, commission, and require you to cause the Rev'd William M. Baker, who is a resident of the city or town of Zanesville, county of Muskingum, State of Ohio, and witness for the defendants, to come before you at such time and place as you may appoint, and that you then and there carefully examine him upon oath, or affirmation, first to be taken before you touching the annexed interrogatories:

1. That you reduce his answers so taken to writing in proper form, and cause the same to be subscribed and sworn to before you by said witness.

2nd. That you certify under your hand and seal of office that said answers were sworn to and subscribed before you.

3rd. That you seal up in an envelope the answers so taken, together with the annexed interrogatories, x-int'g's, &c., and this commission with your name written across the seal thereof.

179 4th. That you endorse on said envelope the names of the parties to said suit, as well as the name of said witness.

5th. That you direct the package to the clerk of the circuit court of the United States for the western district of Texas, at Austin, Texas.

6th. That if such package be transmitted by the public mail, the postmaster shall endorse thereon he received it from your hands, and sign his name thereto.

Which answers, when so taken and returned as aforesaid, are to be read in evidence in a certain suit pending in said circuit court of the

United States, at Austin, wherein Louis Grosholz and others are complainants, and Caroline Newman & others are defendants, No. 53 on the chancery docket of said court.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court of the United States at Austin, this 2nd day of December, A. D. 1870.

[L. S.] MATTHEW HOPKINS, *Clerk.*

180 In the United States circuit court for the western district of Texas, at Austin. In chancery.

LOUIS GROSHOLZ, CHRISTIANA GROSHOLZ, CHARLES F. Sauter, Charles H. Eggert, Wilhelmina Eggert, Reuben A. Harwick, Amanda Harwick, Henry Stauffer, Emeline B. Stauffer, J. D. Bietel, Charlotte Bietel, Mary H. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kaemerer, and Simon K. Gross, guardian of Emma Catherine Gross, a minor, Penrosa F. Eisenbrown, Matilda Steinbacher, and William Eisenbrown, plaintiffs,

vs.

CAROLINE NEWMAN AND A. B. NEWMAN, IN THEIR own behalf, and also as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine Warenberg', minors and heirs at law of John Wahrenberger, deceased, John B. Costa, Frank Pressler, and Charles Weise, defendants.

No. 53. Chancery.

To the said plaintiffs or Mess. Robards & Jackson, their attorneys and solicitors of record:

Take notice that five days after service upon you of a copy of the following interrogatories, we will apply to the clerk of the said circuit court of the United States for a commission to take there-

181 on the answers and depositions of William M. Baker, who is a resident of the city or town of Zanesville, county of Muskingum, State of Ohio, and witness for the defendants in the above-entitled cause now pending in said court.

BOWERS & WALKER,
HANCOCK & WEST,
Solicitors for Def'ts.

Interrogatories to be propounded to William M. Baker, witness for defendants.

Int. 1. Where did you reside on the first day of January, 1854; and where did you reside from thence until the first day of January, 1865? If you say you resided in the city of Austin, county of Travis, and State of Texas, during the time mentioned, then state what your occupation, business, or profession was during the time you so resided in the said city of Austin.

Int. 2. If you have said you were a minister of the gospel during your residence in Austin, then please state of what denomination? State whether or not you had charge of a church. If so, then state what church; and for how long a time; and also state whether or not

Gustavus Kirchberg and Catherine Kirchberg, or either of them, were members of your congregation, or were members of the church of which you were the pastor.

182 Int. 3. Were you acquainted with Gustavus Kirchberg and Catherine Kirchberg, or either of them, during the time your residence in Austin, if you ever resided in said city; if yea, where did they live? When and where did you first get acquainted with each of said persons? Where are they now? If you say they or either of them are dead, then state when and where they, or either of them, died, and you will also please state in full your means of information.

Int. 4. Please state whether or not the said Gustavus Kirchberg and the said Catherine Kirchberg lived together during the time you knew them, in the said city of Austin; if yea, then state if you know whether or not they were ever married, and you will please state in full your means of information.

Int. 5. Did you ever have any conversation or conversations with the said Gustavus Kirchberg and the said Catherine Kirchberg, or either of th m, as to their manner of living together? If yea, state when and where these conversations, if any, took place. And also state fully all that either of said parties told you as to their marriage, or as to their living together as husband and wife without being married.

183 Int. 6th. Please state whether or not the said Catherine Kirchberg ever made any statements to you as to whether or not she had ever been married to the said Gustavus Kirchberg. If you say she did, then state fully all she ever said to you on this subject. State fully when and where these statements were made. Who was present? How did she come to make the statements? For what purpose did she make such statements to you? State fully and in detail all the circumstances inducing or leading to the interview between the said Catherine Kirchberg and yourself, and to the making such statements by her. Please answer this interrogatory as fully as you can, and do not refer or answer hereto, to any statements you may have made in answer to any previous interrogatory.

Int. 7. State any other fact or circumstance within your knowledge tending to show the marriage of the said Gustavus and Catherine Kirchberg, or to show that they were not married, but lived together without marriage.

HANCOCK & WEST,
BOWERS & WALKER,
Solicitors for Def'ts.

Cross-interrogatories by plaintiffs.

X-int. 1. If Catherine Kirchberg made any statements to you on the subject inquired after in the foregoing interrogatories, was not

184 every such statement made to you under the seal of confidence and as her pastor and spiritual adviser, and never to be repeated by you?

X-int. 2nd. To whom did you ever communicate the fact that said Catherine had made such statements to you, and how were you induced to make such communications, in disregard of the confidence reposed in you by her, if she ever made such statements to you?

ROBARDS & JACKSON,
Sol's for Plaintiff.

NOTE.—The plaintiffs object to the witness testifying to any statement made by Gustavus Kirchberg or other party, as mere hearsay, and as such incompetent testimony.

ROBARDS AND JACKSON,
Sol's for Plaintiffs.

It is agreed that commission issue on above interrogatories and cross-interrogatories, in accordance with the law and practice of the State of Texas, and that all objections to the manner of execution of such commission, and to the depositions taken thereunder, are hereby waived, except such objections as may be to the materiality or relevancy of the testimony, this 30th of November, A. D. 1870.

ROBARDS & JACKSON,
Sol's for Plaintiffs.
BOWERS & WALKER,
Att'ys for Mr. & Mrs. Newman & Pressler & Weise.

185 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing and annexed five pages contain a full and true copy of the int'ys, x-int'ys, & waivor, filed in this court, addressed to Rev'd W'm M. Baker, witness for def'ts, in case No. 53, chancery, Louis Grosholz et als. vs Caroline Newman and others in chancery.

In teste whereof I hereto set my hand & seal of court at Austin, this 2nd day of December, A. D. 1870.

[L. S.] M. HOPKINS, *Clerk.*

LOUIS GROSHOLZ & OTHERS
vs.
CAROLINE NEWMAN & OTHERS. } No. 53.

Be it remembered that, on this 13th day of December, A. D. 1870, the witness, Rev. William M. Baker, made the following answers to the direct and cross-interrogatories attached to the commission issued in above-styled case, which commission is hereto attached.

Int. 1. Where did you reside on the first day of January, A. D.
186 1854, and where did you reside from thence until the first day of January, 1865?

Ans. I resided in Austin City, Travis County, Texas, and was pastor of the Presbyterian Church in that place during the whole of that period.

Int. 2nd. State whether you had charge of a church; and if so, what church?

Ans. I had charge of the only Old-School Presbyterian Church in that city. To the best of my recollection I was in charge of said church, from about 1851 to January, 1865.

Int. 3d. State whether Gustavus Kirchberg and Catherine Kirchberg, or either of them, were members of your congregation, or were members of the church of which you were the pastor?

Ans. Gustavus Kirchberg certainly was a member of the church, and I think his wife was also. They were both members of the congregation, though I could not swear that they were present every Sunday. I was acquainted with both Gustavus Kirchberg and his wife; but I cannot say when the acquaintance began or ended. They resided on Congress avenue, in said city of Austin. I cannot tell exactly

187 when or where I became acquainted with them. My impression is that I first met them in Austin. They are both dead, to the best of my knowledge. I do not recollect the year of their death, but believe they died in Austin, Texas. My memory of the whole transaction is extremly imperfect, but I am certain that I attended the funeral of Gustavus Kirchberg; probably that of the wife, though I am not so certain about that. Gustavus Kirchberg and his wife Catherine lived together during the time I knew them in said city of Austin.

Int. 4. State if you know whether they ever were married.

Answer. I know nothing about it except that they lived together as husband & wife.

Int. 6. Did you ever have any conversation with the said Gustavus Kirchberg and the said Catherine Kirchberg, or either of them, as to their manner of living together?

Answer. Not to the best of my memory; neither of them ever said anything to me about their marriage, or as to whether they ever were married, to the best of my knowledge. Nor did either of them say any thing to me as to their living together as husband and wife
188 without being married. To the best of my memory neither of them ever mentioned the subject of their marriage to me. To the best of my knowledge I never had an interview with either of them concerning their manner of living together or their marriage, and neither of them ever made any statement to me whatever in relation to this subject, and I never made any communication to any one to the best of my recollection inconsistent with or contradicting the foregoing statement.

W'M M. BAKER.

STATE OF OHIO, *Muskingum County, ss:*

I, Edgar W. Allen, clerk of the court, in and for said county, the same being a court of record, do hereby certify that the said witness, William M. Baker, subscribed and swore to the above answers before me, on the 13th day of December, A. D. 1870.

To certify which I hereto set my hand and official seal at my office, in Zanesville, Ohio, on this 13th day of December, A. D. 1870.

[L. S.] E. W. ALLEN,
Clerk of the Court of Common Pleas
for Muskingum County, Ohio.

Fee, &c., $5.00. Paid by def't for Bowers & Walker. E. W. A.

189 On the 2nd day of December, 1870, complainants filed interrogatories to Sophia Ginal, Joseph A. Freund, Geo. K. Zeigler, Louis Grosholz, Adam Maug, Cha's F. Sauter, Milton G. Wolf, Theophilas Hessenbruck & wife, which were crossed, & deposition returned Jan'y 17th, 1871, to wit:

Deposition of Joseph A. Freund, George K. Zeigler, Cha's F. Sauter, Louis Grosholz, Milton G. Wolf, & Theophilas Hessenbruck.—Filed Jan'y 17, 1871. *M. Hopkins, Clerk.*

In the United States circuit court for the western district of Texas, at Austin.

LOUIS GROSHOLZ AND OTHERS
vs.
CAROLINE NEWMAN AND OTHERS. } No. 53. In chancery.

Depositions of witnesses produced, sworn, and examined before me, by virtue of the commission hereto attached, issuing out of said court, upon the interrogatories and cross-interrogatories also hereto attached. Taken at my office in the city of Philadelphia, at No. 208 West Washington square, on the twenty-third, twenty-sixth, and twenty-seventh days of December, A. D. 1870.

CHARLES H. T. COLLIS,
Commissioner for Texas in Philadelphia, Pa.

190 United States circuit court, western district of Texas, at Austin sitting.

The President of the United States to any judge or clerk of a court of record having a seal, or other officer authorized by the laws of the State of Texas and practice of its district courts to take the depositions of witnesses, greeting:

Know ye, that reposing trust in your integrity and fidelity, we have and by these presents do nominate, constitute, appoint, commission, and require you to cause the following-named persons, witnesses for the plaintiffs, to wit, Sophia Ginal, Joseph A. Freund, George K. Zeigler, Louis Grossholz, Adam Macy, Charles F. Sauter, Milton T. Wolf, Theophilus Hessenbruck and his wife, Mrs. Hessenbruck, residents of the city and county of Philadelphia, and State of Pennsylvania, to come be-
191 fore you at such time and place as you may appoint, and that you then and there carefully and fully examine them, on oath or affirmation, first to be taken, touching the annexed interrogatories and cross-interrogatories.

1st. That you reduce their answers so taken to writing in proper form, and cause the same to be subscribed and sworn to before you by said witnesses.

2. That you certify under your hand and seal of office that said answers were sworn to and subscribed before you.

3d. That you seal up in an envelope the answers so taken, together with the annexed interrogatories, &c., and this commission with your name written across the seal thereof.

4th. That you endorse on said envelope the names of the parties to said suit as well as the names of the said witnesses.

5th. That you direct the package to the clerk of the circuit
192 court of the United States, for the western district of Texas, at Austin, Texas.

6th. That if said package be transmitted by the public mail the postmaster shall endorse thereon that he received it from your hands, and sign his name thereto. Which answer', when so taken and returned as aforesaid, are to be read in evidence in a certain suit now pending in said circuit court of the United States, at Austin, wherein Louis Grosholz and others *and others* are complainants, and Caroline Newman and others are defendants. No. 53, chancery, in this court.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 2d day of December, A. D. 1870.

[L. S.] M. HOPKINS, *Clerk.*

193 In the United States circuit court for the western district of Texas, at Austin. In chancery.

LOUIS GROSHOLZ, CHRISTIANA GROSHOLZ, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, Wilhelmina Eggert, Reuben A. Harwick, Amanda Harwick, Henry Stauffer, Emeline B. Stauffer, J. D. Beitel, Charlotte Beitel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elisabeth A. Kaemerer, and Simon K. Gross, guardian of Emma Catherine Gross, a minor, Penrose F. Eisenbrown, Matilda Steinbacker and William Eisenbrown, plaintiffs,
vs.
CAROLINE NEWMAN AND A. B. NEWMAN, IN their own behalf, and also as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, minors and heirs at law of John Wahrenberger, deceased, John B. Costa, Frank Pressler, and Charles Weiser, defendants. } No. 53.

194 To the said defendants or Messrs. Bowers & Walker, their attorneys and solicitors of record:

Take notice, that five days after service upon you of a copy of the following interrogatories, we will apply to the clerk of the said circuit court of the United States for a commission to take thereon the answers and depositions of the following-named persons, who are residents of the city and county of Philadelphia, in the State of Pennsylvania, and witnesses for the plaintiffs in the above-entitled cause now pending in said court.

ROBARDS & JACKSON,
Sols. for Plaintiffs.

Interrogatories to be propounded to Sophia Guinal, Joseph A. Freund, George K. Zeigler, Louis Grosholz, Adam Maug, Charles F. Sauter, Milton T. Wolf, Theophilus Hessenbruck and his wife Mrs.
195 Hessenbruck, (whose christian name is not known,) witnesses for the plaintiffs referred to in above notice.

Int. 1. Are you acquainted with the parties to this suit?

Int. 2. Each of you will state his or her respective age and occupation, and if a married woman will state the name of her husband.

Int. 3. Were you ever acquainted with one Gustavus Kirchberg? If yea, state when and where you first became acquainted with him; and whether he was then a married or an unmarried man.

Int. 4. If said Gustavus Kirchberg was an unmarried man when you first knew him, state whether or not he afterwards married. If he did, state to whom he was married, giving the name of the woman as it was before her marriage with the said Gustavus. State also, where
196 and when, as near as you can, such marriage took place, and state fully your means of knowing respecting such marriage.

Int. 5. If said Gustavus was a married man when you first knew him, state who his wife was, what her name was previous to their marriage, and your means of knowing that said Gustavus and his wife were husband and wife.

Int. 6. Were you ever acquainted with one William Kirchberg, brother, or reputed brother, of said Gustavus Kirchberg? If yea, state when and where you first knew him, and how long you continued to know him? Was he a married or unmarried man during your acquaintance? If married, state the name of his wife, and if married more than once, state the names of all the wives he ever had.

Int. 7. State whether any relationship or connection by marriage ever existed between the said William Kirchberg and the person who
197 was, or was reputed to be the wife of said Gustavus Kirchberg? If any, state what such relationship or connection was.

Int. 8. When and where did you last see the said Gustavus Kirchberg? If he departed or emigrated from the place where you last saw him, state what his destination was; and state further by whom he was accompanied in his departure or migration.

Int. 9. If the said Gustavus Kirchberg and his wife ever had any children born to them, state how many, and their names.

Int. 10. If any person other than his wife, either adult or minor accompanied the said Gustavus when he emigrated, as aforesaid, state who such other person was. If such other person was any kin or connection of said Gustavus or of his wife, state what kin or connection.

Int. 11. If the person named by you as the wife of said Gusta-
198 vus had, in the spring of the year 1862, any father, mother, or brothers and sisters, or descendants of deceased brothers or sisters, state fully who all such kindred were, and show the degree of relationship between them and her. State also the residence of each of such kindred.

Int. 12. State generally your entire knowledge as to who are the heirs at law of the person designated by you as the wife of said Gustavus Kirchberg.

ROBARDS & JACKSON,
Pl'tiff's' Sol's

Cross-interrogatories to be propounded to each of the aforesaid witnesses.

X-int. 1. If you have said that you knew Gustavus Kirchberg and Catherine Kirchberg, you will state each of you when you first knew them, and each of them; where did they live, and where did you reside at that time?

199 X-int. 2. If you have stated that the said Gustavus was ever married, do you know that the person to whom you say he was married came to Texas, or lived with him after his removal to Texas?

X-int. 3. How old was each of the said persons, Gustavus and Catherine. Describe both of them, giving their height, weight, complexion, color of hair and eyes, and any other peculiar physical quality or mark by which you knew them. In answer to this you will also state whether your answer is of your memory or from suggestions, or information of others?

X-int. 4. Do you not know, and is it not a fact that the said Gustavus came to Texas, and thereafter resided with a woman named Catherine, with whom he was never married, and with whom he so lived without marriage until his death. If you do not know such to be the fact, state if such has not been your information, and is not such
200 your belief, and why should you know of the marriage of said parties, Gustavus Kerchberg and the woman Catherine, when

they both knew and so stated that they were living together without marriage?

X-int. 5. Give a description of the mental faculties of said parties, and particularly of Catherine; was she intelligent; would she have capacity enough to know whether she had been in fact married to the said Gustavus? If yea, and you have stated that she was married to Gustavus, why then or what motive could have led her to deny the marriage both before and after Gustavus' death, and why on her death-bed should she have had misgivings and remorse from having lived with said Gustavus without marriage?

X-int. 6. Each of the witnesses is asked to state his own residence at the date of said alleged marriage, and where he or she has re-
201 sided ever since, and where the present residence.

X-int. 7. Have you stated that the woman called Catherine, who died in Texas in 1862, and who lived with Gustavus, in Texas, is the same person of whom you have stated that she and said Gustavus were married in the State of Pennsylvania? If you have so stated, you will state why you have so stated, and is it not true that such statements are made only upon your information, that is, that you have been narrating mere hearsay.

X-int. 8. Why do you remember so as to give details of the marriage after such a long interval?

X-int. 9. State whether you have not heard that said Gustavus and Catherine were never married and were they not reputed to have been so living together. Was it not known to the family that Gustavus came to Texas and lived with a woman not his wife?

X-int. 10. State by whom was the marriage ceremony between
202 Gustavus Kirchberg and the said Catherine performed. If any such was performed, name the persons who were present at the time, their ages at that date, and their present whereabouts; name the official performing the ceremony, and his then age and present whereabouts. Was the said ceremony performed by a priest, clergyman, minister, by a secular person, or local magistrate or official. In what year, monrh, and day of the month was the ceremony performed. Was it in a church, and what church or what house and in what city or town, on what street, and what time of day or night was it performed. Was Catherine a maid at the time of her alleged marriage with Gustavus, or was she a widow at that date, and who was her first husband, and when and where did he die?

HANCOCK & WEST.
BOWERS & WALKER,
Sol's for Defendants.

203 It is agreed that commission issue on above interrogatories and cross-interrogatories in accordance with the law and practice of the State of Texas, and that all objections to the manner of execution of such commission and to the depositions taken thereunder are hereby waived, except such objections as may lie to the materiality or relevancy of the testimony. This 30th November, 1870.

BOWERS & WALKER,
Att'ys for Mrs. & Mr. Newman, Pressler & Weiser.
ROBARDS & JACKSON,
Sol's for Pl'ffs.

I, Mathew Hopkins, clerk of the circuit court of the United States, in & for the western district of Texas at Austin, do hereby certify that

the foregoing and annexed pages contain a full and true copy of the original interrogatories and x-interrogatories filed in this court in case
No. 53, chancery, entitled Louis Grosholz et al. vs. Caroline
204 Newman et al. Interrogatories directed to Sophia Ginal, Joseph A. Freund, George K. Zeigler, Louis Grosholz, Adam Muag, Charles F. Sauter, Milton T. Wolf, Theophilus Hessenbruck, and his wife, Mrs. Hessenbruck, witnesses for the plantiffs.

In teste whereof I hereto set my hand and seal of court at Austin, this Dec. 2d, A. D. 1870.

[L. S.] M. HOPKINS, *Clerk.*

205 JOSEPH A. FREUND, being duly sworn, says:

1. In answer to the first interrogatory: I only know Mr. Louis Grosholz, and I know the Wolf family.

2. In answer to the second interrogatory: I am sixty-five years of age; I am keeping a cigar-store.

3. In answer to the third interrogatory: I knew Gustavus Kirchberg very well; I became acquainted with him first when he lived with his brother William, in Third street, in this city. That was about the year 1837 or 1838. He was then single.

4. In answer to the fourth interrogatory: He got married in 1839 or 1840; he married Mrs. Bleas; she was a widow; I knew her first husband very well, too; I can't tell when the marriage took place; I know they were married, because I visited them when they were keeping house on Ridge road.

206 5. In answer to the fifth interrogatory: I knew him when he was single.

6. In answer to the sixth interrogatory: I knew William Kirchberg very well; I knew him at the same time I knew Gustavus. They kept a gun-store together at No. 96 North Third street. He was married and was living with his wife. I do not know what her name was. He only had one wife.

7. In answer to the seventh interrogatory: I did not know of any.

8. In answer to the eighth interrogatory: I last saw Gustavus when
C. H. T. C. he lived in Ridge road about 1841 or 1842. He afterwards went to Texas. William had been there twice before. His wife accompanied Gustavus; I mean Gustavus' wife; I do not know whether anybody else accompanied him.

9. In answer to ninth interrogatory: They had no children. She
207 had none either by her first husband.

10. In answer to tenth interrogatory: I do not know of any other person accompanying him.

11. In answer to the eleventh interrogatory: I guess her father and mother are dead; I believe her brothers and sisters are living up in the country. Mrs. Grosholz is her sister and Mrs. Sauter; but she had some younger sisters.

12. In answer to twelfth interrogatory: I do not know.

X 1. In answer to first cross-interrogatory: I first knew Gustavus in 1837; he lived with his brother William; I lived then where I live now, No. 480 North Third street. When I first knew Catherine she was living with her first husband, in 1836. When they (Gustavus and Cathrine) were married they lived on the Ridge road, when I knew them.

208 X 2. In answer to the second interrogatory: I never was in Texas, and cannot say. Her father (old Mr. Wolf) told me she was in Texas.

X 3. In answer to the third cross-interrogatory: When he got married Gustavus was about 28 or 30 years of age. Catherine was a little older a few years. Gustavus was, may be, five feet nine inches high; was a middle-sized man; could not tell his weight; light complexion; brown or sandy hair and whiskers. Don't recollect the color of his eyes. Don't recollect any particular mark he had about him. I speak entirely from my own memory.

X 4. In answer to the fourth cross-interrogatory: No, sir. They were married; that's a sure thing. I never heard, nor would dream of such a thing as that they wasn't married.

209 X 5. In answer to the fifth cross-interrogatory: Catherine was pretty smart. She wouldn't live with a man without being married. She was too good-looking. She could have got many a man to marry her. I never heard of her denying her marriage.

X 6. In answer to the sixth cross-interrogatory: I resided then where I do now, at No. 480 North Third street.

X 7. In answer to the seventh cross-interrogatory: I know nothing about Catherine while she was in Texas. I know she left here with her husband to go there.

X 8. In answer to the eighth cross-interrogatory: I do not give the details of the marriage.

X 9. In answer to the ninth cross-interrogatory: I never heard of such reports until now.

210 X 10. In answer to the tenth cross-interrogatory: I was not at the wedding. Catherine was a widow of a Mr. Bleas. He died about 1838.

JAS. A. FREUND.

THEOPHILUS HESSENBRUCK being duly sworn, deposes and says:

1. In answer to the first interrogatory: I know Louis Grosholz, Christiana Grosholz, Charles F. Sauter, only, of the persons who are parties to this suit.

2. In answer to the second interrogatory: I am fifty-eight years of age; am in the hardware business.

3. In answer to the third interrogatory: I knew Gustavus Kirchberg well. I became acquainted with him in 1837. He was then an unmarried man.

211 4. In answer to the fourth interrogatory: I understood he married in 1839 or 1840. He married a widow named Mrs. Bleas. I do not know where the marriage took place, but it was in Philadelphia. I have visited their house when they lived at Mill Creek and when they lived on the Ridge road, both in this city; and they were there living together as man and wife.

5. In answer to the fifth interrogatory: He was single when I first knew him.

6. In answer to the sixth interrogatory: I knew William Kirchberg well. He was the brother of Gustavus. I knew him, also, first in 1837, in this city. His store at that time was No. 96 (old number) North Third street. He was always married when I knew him. His wife's maiden name was Everts. She was his only wife. She is now my wife and is living; but sick at the present time. William Kirchberg died, I

212 think, about 1839. He never had but one wife.

7. In answer to the seventh interrogatory: No relation or connection whatever existed between William and the wife of Gustavus.

8. In answer to the eighth interrogatory: The last I saw of Gustavus was some years after his marriage. I do not remember the year. I

know he emigrated to Texas. He came into my store and bid me good-bye. He took his wife and a little child with him. The little child was a boy, but was not their own child. They had adopted him, or were taking care of him.

9. In answer to ninth interrogatory: They never had any children, to my knowledge.

10. In answer to tenth interrogatory: I only know that the little boy before spoken of, accompanied them. He was not the least
213 relation to either Gustavus or his wife. I am informed the boy's mother is still living in Philadelphia.

11. In answer to the eleventh interrogatory: I know nothing whatever about her relations.

12. In answer to the twelvth interrogatory: I do not know.

X 1. In answer to the first x-interrogatory: When I first knew Gustavus Kirchberg, it was in the year 1837; he then lived with his brother William at No. 96 North Third street. I, at that time, was boarding, I believe, in Fifth street, below Library street. When I first knew Catherine she was living with Gustavus in New street, I think, between Third and Fourth street. They were housekeeping. I think I then lived in William Kirchberg's house, No. 96 North Third street.

214 X 2. In answer to the second x-interrogatory: I do not know anything about his domestic life in Texas. I received one letter from him on business while he was there.

X 3. In answer to third cross-interrogatory: Gustavus was about 29 or 30 years of age. Catherine was fully as old or rather older. Gustavus was six feet high, weighing about 170 lbs.; brown complexion. His hair was dark brown, and dark-brown whiskers. I don't know the color of his eyes. One of his hands was marked near the wrist, and somewhat crippled from a gunshot wound. This answer is all from my own memory.

X 4. In answer to the fourth cross-interrogatory: I do not know, nor have I ever heard, of the matters spoken of in this question.

X 5. In answer to the fifth cross-interrogatory: Catherine was
215 not dumb—by no means. She was a regularsmart woman. Certainly she had capacity to understand whether or not she was married. I never heard that *that* she said she was not married. Everybody who knew them in Philadelphia, I suppose, understood they were married.

X 6. In answer to the sixth cross-interrogatory: At the time of the marriage, I lived in Church alley. From there I went to No. 96 North Third street; from there I went to La Grange street, and from there I got married, and moved into New street, below Second street. I now live in West Philadelphia, and have lived there fifteen years.

X 7. In answer to the seventh cross-interrogatory: I do not know anything more about Texas than that they went together, and took a little boy to Texas. I know they arrived there by a letter I received from Gustavus.

216 X 8. In answer to the eighth cross-interrogatory: I don't give the details of the marriage.

X 9. In answer to the ninth cross-interrogatory: I never heard and do not know anything of the kind. I never had the least doubt about their being married.

X 10. In answer to the tenth cross-interrogatory: I was not at the wedding and know nothing about its details. Catherine was a widow when she married Gustavus. Her first husband was a Mr. Bless. I do not know when he died.

THEO. HESSENBRUCK.

217 CHARLES F. SAUTER, being duly sworn, deposes and says:

C. H. T. C. 1. In answer to the first interrogatory: I know Louis Grosholz. I know Christiana Grosholz. She is my wife's sister. Caroline F. Sauter is my wife. I know Charles H. Eggert; Wilhelmina Eggert, my niece; Amanda Harwick, my niece; Emeline B. Stauffer, my niece; Charlotte Bertel, my niece; Mary A. Eisenbrown, my niece; Frances Hauck, my niece; Frederick Wolf, my brother-in-law; Charles B. Wolf, my nephew; Elizabeth A. Kaemerer, my niece; Emma Catherine Gross, my niece; Penrose F. Eisenbrown, my nephew; Matilda Steinbacker, my niece; and William Eisenbrown, my nephew.

2. In answer to the second interrogatory: I am sixty-eight years of age. I am not now in any business. I was formerly in the dry-goods and gentleman' furnishing-goods business.

218 3. In answer to the third interrogatory: I was acquainted with Gustavus Kirchberg. I knew him by sight, only, before he was married.

4. In answer to the fourth interrogatory: He married my wife's sister. I was married at that time. He married Catherine Blaess. She was the widow of Daniel Blaess, whom I knew well. I cannot tell where the wedding took place. I was not invited to the wedding. There had been some little coolness between my wife and her sister just at that time, but it didn't last long. It soon blowed over. We visited them right after their marriage, and they visited us. About two years after they were married they came to my home to live, and lived with me from four to six months. The marriage must have been in the year 1838 or 1839, or maybe in 1840. I wouldn't be certain. No, it was not in 1838. It must have been in 1839 or 1840. They both told me they were married.

219 5th. In answer to the fifth interrogatory: He was a single man when I first knew him by sight.

6. In answer to the sixth interrogatory: I never was acquainted with William Kirchberg; but I saw him once or twice. He was married C. H. T. C. before he came to this country; and she (his wife) survived him and is now Mrs. Hessenbruck.

7. In answer to the seventh interrogatory: I never heard of any.

8. In answer to the eighth interrogatory: I last saw Gustavus the day before they left for Texas. It was in 1845 or 1846. Gustavus and Catherine, his wife, came to bid us good-bye. I do not know who accompanied them to Texas. She had a little boy named James Becker or Bowker with her, and I have been informed they took the boy with them.

220 9. In answer to the ninth interrogatory: They never had any children. Catherine had been married, before she married Daniel Bleas, to a man named Hines, by whom she had one child, who died. She had no children by Blaess.

10. In answer to tenth interrogatory: I do not know of anybody accompanying them but the little boy James Becker, or Bowker, and he was no kin to either of them.

11. In answer to eleventh interrogatory: In 1862 Catherine's father and mother were dead. Her brothers, then living, were George Wolf, who is now dead, and Frederick Wolf, now living in North Wales, Pennsylvania. Her sisters, then living, were Mrs. Charlotte Eisenbrown, since dead; my wife, Caroline F. Sauter, Christiana Grosholz; these live in Philadelphia. The children of Mrs. Carlotta Eisenbrown, living in 1862, were Wilhelmina Eggert, Francis Hauck, Charlotte Beitel,
221 Mary A. Eisenbrown, Penrose T. Eisenbrown, Matilda Stein-

backer, and William Eisenbrown; they pretty much live around Allentown, Pennsylvania. The children of George Wolf who were living in 1862 are Amanda Harwick, Emily B. Stauffer, Charles B. Wolf, Elizabeth A. Kaemerer, and Emma Catherine Gross. They all live up in Bucks County, Pennsylvania, near Quakertown.

12. In answer to the twelfth interrogatory: I presume they are the persons who are named as the plaintiffs in this suit.

X 1 In answer to the first cross-interrogatory: When I first knew them as man and wife, they lived in Kensington, Philadelphia County. I resided then in Eighth street, near Walnut street.

X 2. In answer to second cross-interrogatory: I know she went to Texas and lived with him.

222 X 3. In answer to the third cross-interrogatory: When Gustavus got married he was about 28 or 30 years of age; he was about 5 ft 10 in. or 11 in. high, well built. He weighed, I suppose, not less than 175 lbs. His complexion light, but he was sometimes sunburnt; he had brown hair and whiskers. I don't recollect the color of his eyes. Catherine, at that time, was thirty-nine or forty years old. She was tall. She weighed nearly as much as her husband. She was of light complexion and had light-brown hair. These answers are all from my own memory.

X 4. In answer to the fourth cross-interrogatory: I never heard in my life that they were not married.

X 5. In answer to the fifth cross-interrogatory: They were both intelligent. Catherine was a very intelligent, smart woman. She had plenty of intelligence to know she was married. If she denied
223 her marriage on her death-bed it must have been from delirium or something of that kind. She wouldn't say it in her senses.

X 6. In answer to the sixth cross-interrogatory: At the time of the marriage I resided in Eighth street, near Walnut. I left there two years ago last August and moved to 2319 Green street, where I now live.

X 7. In answer to the seventh cross-interrogatory: I have so stated, at least I intended to so state. I know they left my house to go to Texas. I know they both wrote letters to Philadelphia from Texas, while they were living there together.

X 8. In answer to the eighth cross-interrogatory: I do not give the details of the marriage.

X 9. In answer to the ninth cross-interrogatory: I never knew anything of the kind, nor did I ever hear it said by any one.

224 X 10. In answer to the tenth cross-interrogatory: I was not at the wedding and know nothing of its particulars. Catherine was the widow of Daniel Blaess at the time. Daniel died, I think, in 1838.

CHARLES F. SAUTER.

225 GEORGE K. ZEIGLER, being duly sworn, deposes and says:

1. In answer to the first interrogatory: The only persons I know who are parties to this suit are Louis Grosholz and Christiana Grosholz.

2. In answer to the second interrogatory: I am in my forty-ninth year of my age. I am president of the National Bank of Commerce in this city, and the surviving partner of the firm of Henry Boblen & Co., importers.

3. In answer to the third interrogatory: I knew him well, both before and after his marriage, but knew him best while he was single. I

became acquainted with him about the year 1838; he was then unmarried.

4. In answer to the fourth interrogatory: He did afterwards marry, in the end of the year 1839 or beginning of 1840, I think. He married a Mrs. Bless or Blase. I think she spelt her name Blaes or
226 Bless. She was a sister of Mrs. Grosholz. I cannot say where the marriage took place, but it was up-town, and I think it was in Fourth street, somewhere between Race and Vine street'. Mr. Grosholz lived in Race street, below Third street. I was in the habit of going there and meeting Kirchberg and his wife before
C. H. T. C. they were married. My brother, who was an artist, resided next door to Grosholz, and I was frequently there. I was not at the marriage. I have heard Gustavus Kirchberg refer to her as his wife.

5. In answer to the fifth interrogatory: As I knew him as a single and married man both, this interrogatory does not apply to me.

6. In answer to the sixth interrogatory: I knew him very well indeed; knew him previous to knowing Gustavus. Went frequently with him on gunning excursions with my father. I knew him a
227 year or two before I knew Gustavus, and I knew him until his death. He was a married man; was not married more than once to my knowledge. I did not know his wife's maiden name. After William's death she married a Mr. Hessenbruck, who is now living, and who' I know well.

7. In answer to the seventh interrogatory: I never knew or heard of any relationship or connection existing between them, excepting that he was, of course, her brother-in-law, she having married his brother.

8. In answer to the eighth interrogatory: I lost sight of him a couple of months or so after his marriage. I heard he went to Texas. I know that his wife accompanied him; at least I was informed so by several persons who knew.

9. In answer to the ninth interrogatory: To my knowledge
228 they never had any children.

10 In answer to the tenth interrogatory: I don't know of any other person accompanying him.

11. In answer to the eleventh interrogatory: I knew of no other relation of hers than Mrs. Grosholz, her sister, and a sister named Mrs. Hoffman, who afterwards married a Mr. Blankman, of the city of New York. I believe she is dead.

12. In answer to the twelfth interrogatory: I do not know.

X 1. In answer to the first cross-interrogatory: I resided, when I knew Gustavus Kirchberg and his wife, in my father's house on old York road, near Callowhill street, in this city. Gustavus to come there often.

X 2. In answer to the second cross-interrogatory: I was so informed by Mr. Hoffman, Mrs. Kirchberg's brother-in-law, who
229 told me so upon his return from Texas, and who said that Kirchberg and his wife were doing well in Texas.

X 3. In answer to the third cross-interrogatory: At the time of the marriage Gustavus was about thirty years of age, I should judge; brown hair and side whiskers; bronze complexion; he had blue or grey
C. H. T. C. eyes, I think, and certainly stood six feet high. He was a raw, athletic kind of man; not stout; was a good-looking fellow; a manly-looking fellow; he must have weighed 160 or 175 lbs., I should judge. Catherine was a tall woman; a good-sized woman; good-looking; oval-faced. I think her eyes were light, but really I cannot recol-

lect. What I have here testified to is exclusively from my own memory.

X 4. In answer to the fourth cross-interrogatory: I do not know of such a thing, nor have I ever heard it insinuated. I do
230 not know nor do I believe that they ever denied being married. There is not a particle of doubt in my mind that they were man and wife. Their marriage was a notorious fact at the time, and was freely talked about and commented upon, as is customary, in the neighborhood where it took place.

X 5. In answer to the fifth cross-interrogatory: Catherine was an intelligent, sharp woman. Gustavus was an intelligent, educated, and well-bred man. She certainly had capacity enough to know she was married. I cannot answer the hypothetical part of the question, because I do not believe she ever did deny her marriage. She could have no motive for it.

X 6. In answer to the sixth cross-interrogatory: At the date of
231 the marriage I resided on old York road, near Callowhill street; then I resided in Fourth, below Walnut street; then in Arch street, below Third street; then in Fourth street, near Coates street, and now in Locust street, above Thirteenth street.

X 7. In answer to the seventh cross-interrogatory. All my information about Catherine in Texas is hearsay.

X 8. In answer to the eighth cross-interrogatory. I do not give the details of the marriage.

X 9. In answer to the ninth cross-interrogatory: In answer to both branches of this question, I say positively, no.

X 10. In answer to the tenth cross-interrogatory: My knowledge of the details of her marriage is derived from the talk of the people in the neighborhood at the time. I do not know who was present at the time of the marriage. Catherine was a widow at the time. I knew her former husband; his name was Blaes or Bless.

GEORGE K. ZIEGLER.

232 LOUIS GROSHOLZ, being duly sworn, deposes and says:

1. In answer to the first interrogatory: Christiana Grosholz is my wife. Charles F. Sauter is my brother-in-law. Caroline F. Sauter is his wife. Charles H. Eggert is my wife's nephew. Wilhelmina Eggert is his wife. Reuben A. Harwick married my wife's niece. Amanda Harwick is his wife. Henry Stauffer married Emeline B. Wolf, my wife's niece. I. D. Beitel married Charlotte (Eisenbrown) Beitel, my wife's neice. Frances Hauck is my wife's niece; her husband is dead. Frederick Wolf is my wife's brother. Charles B. Wolf is my wife's nephew. Elisabeth A. Kaemerer is my wife's niece. Simon K. Gross married my wife's niece, who is now deceased. Emma Catherine Gross is the daughter, I believe, of Simon K. Gross. Penrose F. Eisenbrown is my wife's nephew. Matilda Steinbacker is my wife's niece.
233 William Eisenbrown is my wife's nephew. I know them all. I do
C. H. T. C. not know any of the defendants.

2. In answer to the second interrogatory: My age is fifty-seven years. I am now retired from business. I used to be. I was formerly an importer of French, English, and German goods.

3. In answer to the third interrogatory: I was acquainted with Gustavus Kirchberg. I think I got acquainted with him in the year 1836 or 1837. He was single then and was working for his brother William as a gun-maker. I became acquainted with them from the fact that I imported guns, or rather the firm of Wicht, Wenner & Co., in whose employ I was at that time, imported guns, and sometimes we sold guns to

William. William had a store then on Third street, below Race street, in this city.

234 4. In answer to the fourth interrogatory: Gustavus Kirchberg afterwards got married; he married a widow named Catherine Blass. She was the widow of Daniel Blass, whom I knew well. The marriage took place in the year 1840, in the house of Mr. Charles Heninger, who, I believe, is now dead, at No. 124 North Fourth street, now number 224, above Race street. They were married by Henry Ginal, who was a preacher of the German Reformed Church. I was not at the wedding, nor was my wife, who was confined to her bed at the time. My wife was Catherine Blass' sister. I had had a dispute with Catherine while she was living at my house, and therefore I was not invited to the wedding. Catherine lived with me a year and a half or two years just before she was married. Gustavus Kirchberg was courting her at that time, and came to see her every night. He told me

235 several times he was going to marry her. But I laughed at the idea, because she was older than he was. She left our house four or five or maybe six weeks before the marriage. I heard of the marriage the day after it took place, from Charles Edler and Constantine Edler, his brother, and Edward B. Wolf, my nephew. They told me they were at the wedding and had a fine time. Constantine Edler and Edward B. Wolf are now deceased. Charles Edler has left Philadelphia. I do not know where he is now. After the marriage my dispute with Catherine was amicably settled, and they invited me and my wife to dinner. We dined with them in the house they were married in in Fourth street. They were then living together as man and wife and addressed each other as man and wife. I never heard at that time or since, until I heard of this case, of any doubt about their marriage.

236 5. In answer to the fifth interrogatory: He was single when I first knew him.

6. In answer to the sixth interrogatory: I became acquainted with William Kirchberg at the same time I became acquainted with Gustavus. I knew him until his death. He died before Gustavus was married. He was a married man when he came to this country and was married at the time of his death. He never had in this country but one wife. After his death she married Theophilus Hessenbruck, and is now living.

7. In answer to the seventh interrogatory: There was no relationship whatever, existing between William Kirchberg and the wife of Gustavus Kirchberg.

8. In answer to the eighth interrogatory: He went to Texas in

237 1846 or 1847; he and his wife were then living on Mill Creek, near this city; they came into town and stayed at my house two or three days until the vessel should sail. They sailed from Vine street wharf in this city in a schooner or brig. It was on a Good Friday; they started very early in the morning owing to the tide; they took with them a little boy and all three of them came to my room and bid me farewell. I was in bed; my wife was up getting them their breakfast; that is the last I saw of them. The little boy they took with them was named James Baker; he was then about three or four years old. The boy's father was dissipated and was taken care of by Gustavus and his wife, as a matter of charity. The mother of the boy is still living in Philadelphia. While they were in Texas my wife received several letters from Catherine Kirchberg. Four of these letters only can

238 we now find; and these I now produce, (hereto attached and marked A, B, C, D;) one of these letters I find is to my daughter,

in which she speaks of this boy. These letters are all in the handwriting of Catherine Kirchberg. I am familiar with her handwriting and have seen her write. The letter marked A is addressed by her husband in his handwriting; the letters were all brought to us by persons returning from Texas.

9. In answer to the ninth interrogatory: They never had any children She had no children living by her first husband.

10. In answer to the tenth interrogatory: No person accompanied them except the little boy already mentioned; and he was no blood-relation to either of them.

11. In answer to the eleventh interrogatory: In the spring of 1862, the relations of Catherine Kirchberg, (my wife's sister,) then liv-
239 ing, were as follows: Frederick Wolf, a brother; Caroline Sauter, a sister; Christiana Grosholz, (my wife,) a sister. The following are children of *dis*ceased brothers and sisters of Catherine Kirchberg,
C. H. T. C. which children were living in 1862: Mrs. Wilhelmina Eggert, Frances Hauck, Charlotte Beitel, Mary A. Eisenbrown, Penrose F. Eisenbrown, Matilda Steinbacker, and William Eisenbrown are the children of Catherine's *dis*ceased sister, Mrs. Charlotte Eisenbrown; Amanda Harwick, Emily B. Stauffer, Charles B. Wolf, Elizabeth A.
C. H. T. C. Kaemarer, and Emma Catherine Gross are children of Catherine's *dis*ceased brother, George Wolf; Frederick Wolf resides at North Wales Bucks Co., Pennsylvania; Caroline Sauter and Christinna Grosholz reside in Philadelphia; William Eisenbrown lives somewhere in Maryland; Penrose F. Eisenbrown, lives in Pottsville, Pennsylvania. The other Eisenbrown children live in Allentown,
240 Pennsylvania, or the vicinity, except Mrs. Eggert, who now lives in Bethlehem, Pennsylvania. The children of George Wolf live in the neighborhood of Quakertown, Pennsylvania.

12. In answer to the twelfth interrogatory: The persons named in my last answer are the heirs at law of Catherine Kirchberg.

X 1. In answer to the first cross-interrogatory: I knew Gustavus first
C. H. T. C. when he resided with his brother William at No. 96 North Third street in this city, opposite Quarry street. I knew Catherine first about the year 1835. She was then living with her first husband, Daniel Blass, a baker, on Third street, between Butterwood street and Green street, in this city. I resided at No. 86 Race street, in this city.

241 X 2. In answer to the second cross-interrogatory: I do know that Catherine lived with him in Texas.

X 3. In answer to the third cross-interrogatory: At the time of the marriage Gustavus was about thirty years or less; he was an inch or two less than six feet high; a pretty tall fellow; a muscular, strong man. I suppose he weighed about 165 lbs; his complexion was rather fair; his hair dark brown; whiskers of a lighter brown; his eyes were of a kind of grey-brown. Catherine was born in the year 1800, and therefore when she was married she was forty years old. She was a tall woman. They were a good match in this respect; she weighed, perhaps, 140 or 150 lbs. Her complexion was fair; her hair was brown; her eyes were bluish; she walked very erect. I speak on these subjects entirely from my own memory.

242 X 4. In answer to the fourth cross-interrogatory: I never heard of such an insinuation until this case was commenced. While they lived in Philadelphia their marriage was a well-known fact to all their acquaintances.

X 5. In answer to the fifth cross-interrogatory: Gustavus was an intelligent man. Catherine was also very intelligent. She certainly had capacity enough to know she was married. I do not believe she ever denied her marriage.

X 6. In answer to the sixth cross-interrogatory: At the time of the marriage I resided at No. 86 Race street. I left there in 1845, I think, or 1846, and have lived ever since at No. 542 North Sixth street.

X 7. In answer to the seventh cross-interrogatory: I have so stated, or intended so to state. My knowledge is based upon letters constantly received from Catherine, in which she spoke of her domestic affairs, and of her husband, and the little boy she called "Jim."

243 X 8. In answer to the eighth cross-interrogatory: I was not at the marriage, but I heard it spoken of and described by mutual friends, who had been there. The Rev. Mr. Ginal, who married them, told me of the marriage also.

X 9. In answer to ninth cross-interrogatory: I never heard of such reports until this suit was instituted.

X 10. In answer to the tenth cross-interrogatory; The marriage ceremony was performed by the Rev. Henry Ginal, of the Free German Reformed Church. Charles and Constantine Edler were present; also Edward B. Wolf, and I think Frederick Zeigler. Constantine Edler and Edward B. Wolf are dead. Charles Edler has disappeared, I know not where. Frederick Zeigler, I think, is in New York. The ceremony was performed in the spring of 1840, that is as near as I can come to it.

244 It took place at No. 124 North Fourth street, in this city, in the evening. Catherine was a widow. Her first husband died in New Orleans, or on his way there, about 1838. I desire to add that William Kirchberg was not so tall as Gustavus, but was stouter. He was rather bombastic, a good figure. His complexion was lighter than Gustavus. He had lighter hair than Gustavus; blue eyes. He weighed about 190 or 200 lbs. His wife was a small woman.

LOUIS GROSHOLZ.

245 MILTON T. WOLF, being duly sworn, deposes and says:

1. In answer to the first interrogatory: I know all the plaintiffs, excepting Charlotte Beitel, Mary A. Eisenbrown, and Matilda Steinbacker; but I know there are such persons. I do not know any of the defendants.

2. In answer to the second interrogatory: I am thirty years of age. I am advertising agent for Forney's Philadelphia Press.

3. In answer to the third interrogatory: I was not acquainted with Gustavus Kirchberg.

4. In answer to the fourth interrogatory: I know nothing about the subject inquired of.

5. In answer to the fifth interrogatory: I know nothing about the subject inquired of.

246 6. In answer to the sixth interrogatory: I know nothing about the subject inquired of.

7. In answer to the seventh interrogatory: I know nothing of the subject inquired of.

8. In answer to the eighth interrogatory: I never saw him.

9. In answer to the ninth interrogatory: I know nothing of the subject inquired of.

10. In answer to the tenth interrogatory: I know nothing of the subject inquired of.

11. In answer to the eleventh interrogatory: I have not named any per-

son as the wife of Gustavus Kirchberg, and therefore cannot answer this question.

12. In answer to the twelfth interrogatory: I have not desig-
247 nated any person as the wife of Gustavus Kirchberg, but I know who are the heirs at law of his wife Catherine, because she was my aunt. She was married when I was an infant. She has one brother living, who resides in North Wales, Montgomery, Pa. His name is Frederick Wolf, and he is my father. She has two sisters living here in Philadelphia, namely, Mrs. Louis Grosholz and Mrs. Charles F. Sauter. Her nephews and nieces are as follows: The children of her sister, Mrs. Carlotta Eisenbrown, are Wilhelmina Eggert, living in Bethlehem, Pa.; Frances Hauck, living in Allentown, Pa.; Charlotte Beitel, living in Allentown, Pa.; Mary A. Eisenbrown, living, I think, in Allentown, Pa.; Penrose F. Eisenbrown, living in Pottsville, Pa.; Matilda Steinbacker, living in Danville, Pa.; William Eisenbrown, living in Manchester, Carrol County, Maryland. The children of her brother, George Wolf, are as follows: Amanda Harwick, living in Quakertown, Pa.; Emily B. Stauffer, living near Coopersburg, Pa.; Charles B. Wolf,
248 living at Richlandtown, Pa.; Elizabeth A. Kamerer, living at Richlandtown, Pa.; Emma Catherine Gross, living near Sellersville, Pa.

X 1. In answer to the first cross-interrogatory: I never knew them.

X 2. In answer to the second cross-interrogatory: I know nothing about it.

X 3. In answer to the third cross-interrogatory: I know nothing about them.

X 4. In answer to the fourth cross-interrogatory: I never heard anything of the kind. On the contrary, I have always heard and understood they were married here in Philadelphia.

X 5. In answer to the fifth cross-interrogatory: I know nothing about the subject inquired of.

X 6. In answer to the sixth cross-interrogatory: I reside at No. 919 Chestnut street, in this city.

249 X 7. In answer to the seventh cross-interrogatory: I know nothing of the subject inquired of.

X 8. In answer to the eighth cross-interrogatory: I remember nothing about it.

X 9. In answer to the ninth cross-interrogatory: I never heard of it, nor was it ever known to any member of my family; and I do not believe it.

X 10. In answer to the tenth cross-interrogatory: I know nothing about the subject inquired of, of my own knowledge.

MILTON J. WOLF.

It was proved to the satisfaction of the commissioner that Sophia Ginal and Mrs. Hessenbruck were sick, and unable to be examined, and that Adam Maag was aged & infirm, and unable to attend at the office of the commissioner.

CHARLES H. T. COLLIS,
Commissioner.

250 A,

AUSTIN, 3 *Juni* 1850.

LIEBE SCHWESTER:

Ne'me mir es nich' vorübel, dasz ich dir nicht schon län'st geschrieben hab', jetzt hab' ich eine gute Gelegenheit durch Herrn Messen. Ich

hoffe mein Schreiben *werden* Euch gesund antreffen; was *aus* anbelangt sind wir auch gesund. Bei uns geht es gut*h* und jetzt sind wir am Bauen; wir haben eine Lot*h* in der Haub*t*-Stras' in Austin und die nä'ste dazu werden wir auch kaufen zu Garten. Unser Wohnhaus werd von jetzt an 4 Wochen ferdig, der Brun'en is auch gegraben und gutes Wasser, u. der Scho*b* ist auch angefangen, so sind wir jetzt begriffen, bis wir Alles in Ord*th*nung haben. Wir haben 2 Küh', Hü'ner u. Enten, das' wir Milch u. Eier genu*ch* haben. Das jun'e Rindvie', Pferde*n* u. Esel, Schweine*n*, haben wir in der *Brehre* laufen. Ich kan' sagen, so lang' wir in Austin sind haben wir gutes Glück gehabt, und doch wünsche ich mich im'er in der Nehe be' meine liebe' Geschwistern zu sein, u. besonders bei dir, l. Sch. Chri., wo ich schon oft eine manche
251 Tre'nen geweint*h* hab'; das vergessse ich in meinem Leben nicht wie gut*h* du im'er zu mir warst, bisz auf die letzte Stund*t*. Auch deine ganze Familie habe ich im'er vor meine Augen, auch bin ich oft in Treumen bei Euch; ach, es macht mich gantz kranck, auch bin ich nicht mehr so stark wie ich wa*h*r. Ich hab' jetz' eine gute Ma*ch*t, die erst von Deutschland gekom'en; ist eine gute Köchen. Sie ist eine Person wie Linzweiler, ich kan' mich auf sie ganz verlassen. Auch sage der Wi*h*l'mene, das' ich den Brief von ihr erhalten hab' u. darin gesehen, dasz die Geschäfte*n* letzten Winter nicht gut waren, und weil sie mir schreibt, ich sollt' ihr alles genau schreiben was ich haben wollt', so wol't' sie mir alles besorgen, aber jetzt will ich alles zurückstellen bis spä*t*er, weil wir jetzt zu viel Geld brauchen mit dem Bauen. Auch kan' es sein, wa*n*' wir Alles im Reinen haben, das' ich einen Besuch bei Euch mache'. Wa*n*' ich diese Hoffnung nicht nehre so könnte ich beinah' nicht leben; wa*n*' ich meine Geschwister nicht mehr sehen u. ihre li. Kinder. Auch an meine 2 Brüder denke ich sehr oft. Grüsze sie mir, auch ihre Frauen u. Kinder. Ich hätte Dir schon öfters geschrie-
252 ben, aber mein Hertz war im'er so vol', dasz ich nicht kon't'. Liebe Schwest*t*er, ich bitte Dich, schreibe mir auch gleich ob ihr Alle gesund si*n*d, es werde mich ganz erleichtern ein par Zeilen von Dir zu lesen. Den Brief, was die Wi*h*lme geschrieben hat, war nicht deutsch geschrieben u. Gusta*f* kan' mir i'n nicht gut lesen, so mus' ich eine gute Freundin lessen laszen *vor* mich. Und von Carolin' u. ihr l. Man' u. Kinder hab' ich auch noch keinen Brief bekom'en, auch bin ich begi'rig ob sie noch gesund sind. Grüsze sie mir herzlich, auch der Lotte ihre Kinder u. Alle die nach uns fragen.

Herr*n* Messen kan' Dir Alles m*i*ntli*g* ausrichten wie es in Austin ist. Er sagt' mir, er werde jetz' in Philadel. bleiben, er wer' das Reisen mü*th*.

Meine*n* besten Grüsz' von mir u. Gusta*f* and Dich u. Deinen lieben Man' u. an die ganze Familie, u. meine Lin' fregt im'er so viel von seine Krossen Groszholz u. Sonders, er möchte sie nur schreiben.

(Signed) KATHARINA KIRCHBERG.

M's CH. GROS'HOLZ, *Philadelphia.*

253 B.

AUSTIN, T., 16*th November* 1850.

LIEBE SCHWESTER:

Es scheint mir Du hast mich ganz vergessen. Ich hoffte Herr*n* Messen hat Dir den Brief übergeben von mir. Er war bei uns u. er sagt' uns, er wollt' selb't zu Dir u. mit Dir sprechen. Du kan'st denken was *vor* eine grosse Freude mir das macht'. Ich war am Hemter machen *vor* mich, da dachte ich wol't' die *E*rmel Dir schicken, es ist ja

von keinem Werth, nur das' Du mich nicht vergessen hast. Ich hoffe Du werst es mir nicht vorübel genom'en haben so ein gerin'es Andenken zu schicken. Ich hoffe die paar Zeilen werden Euch gesund antreffen. Was uns anbelangt sind wir auch gesund u. wir wohnen seidt im 1. August in unser eigen Hausz. Wir haben es jetz' gut eingericht'. Auch die andere Gebäutte sind auch ferdig, wo Gustaf noch die Grob-Schmitterei und Wagner' eingerichtet hat, da er viel Geld 'mit verdient. Es hat uns schon viel Geld gekost bis wir es soweit ge-
254 bracht haben. Auch hatten wir einen drockenen Som'er, es ist Alles verdor . Keine Kardoffel, auch sonst kein anders Gemüsz haben wir bekom'en. Ich denke oft zurück u. mus' mit Denken vorlieb nehmen. Die Leiten, was schon viele Jahren in Texas wohnen, die haben gesagt, so keinen heissen Sommer hatten sie noch nie gehabt. Ich konnte es beinah' nicht aushalten. Liebe Schwester Chr. Ich bitte schreib' mir sobald wie möchlig, ich bin so begi'rig ob Ihr noch alle gesund sind u. die ganze Familie, auch meine 2 Brüder. Grüsze sie herzlich von mir und ihre Familie'. Liebe Schwester, ich kan' Dir sagen, wen' man von seinen Geschwistern so weit entfernd ist, so denk' man oft zurück, den' es vergeth kein Tag u. Nacht wo ich im'er in Gedanken bei Euch bin, u. Deine liebe Kinder habe ich im'er vor meinen Augen. Ich mus' aufhören, mein Herz ist zu voll. Deine No'mer vom Hausz hab' ich vergessen, schreib' sie mir.

Ich und Gustaf grüszen Euch herzlich.

Ich bleibe Deine getreue Schwester.

(Sig'd) CATHARINA KIRCHBERG.

255 Lina lasz' seiner Karsen alle grüszen. Er sprecht jeden Tag von ihnen.

CHRISTINA GROSZHOLTZ.

C.

AUSTIN, *den 26ten Februar* 1854.
Son'tag Abend.

LIEBE SCHWESTER WILHELMINA:

Die gute Gelegenheit wil' ich benu'zen. Die Ledie, was Dir die paar Zeihlen überreicht, ist die Miss Lien, sie wohnt in Neu *Org*, und sie war in Austin, bei ihrer Schwester, diesen Winter auf Besuch. Wir wohnen nächts beisam'en, den' Lornel Woth und Kirchberg sind gute Freunde. Ich und die Misses Woth sind sehr gute Freund'en zusam'en, und so ist es mir lieb, das' ihre Schwester einen Besuch bei Dir macht, und so kannst Du immer von mir hören, den' die Famil'e' machen im'er Besuch zusam'en und es würde mich herzlich freuen, wen' du bekan't mit ihnen werts, und Du kan'st auch muntlig mit Mis' Lin sprechen, din' ich bin sehr stolz auf Dich und freut mich, wen' ich die Gelegenheit hab', das' ich kan' eine Bekan'te von mir zu Dir schicken.

256 Liebe Wilhelm', ich bitte nim' es mir nicht übel, das' ich das thue; den Brief, wo ich den 6. November geschrieben hab' hast Du mir nicht geantwordtet; hast Du i'n nicht bekom'en, so schreibe es mir dan'. Ich habe geschrieben was Du wissen wol'sts, auch habe ich Goffner Bell ein paar Zeilen an Dich mitge'ben. Er ist jetzt in Waschengtun, ich hab' von ihm gehört, dasz er krank 4 Wochen im Bett' gelegen hat. Er ist wi'der besser. Er ward ein Besuch bei Dir machen bevor er nach Austin kom't.

Liebe Schw., ich hoffe mein Schreiben werd Dich und Deine Familie gesund antreffen; was uns anbelangt sind wir, Gott Lob, gesund; auch

hatten wir einen gutten Winter, nicht viel kalt; wir hatten nur ein Tag Schnee, und nicht viel Regen hatten wir auch noch nicht, und wir *imbruffen* unser *Prabierde* mit jedem Tag. Gustaf hat viel Arbeit und
er ist ein guter, arbeitsamer Man', er ist im'er bei seine Arbeiter
257 in seinem Schob, u. Du weis't, das' ich das meine auch dazu thu', den' arbeiten mus' man, wen' man will was vor sich bringen. Liebe Schwester, ich wünschte u. möchte nur auch einmal Dich sprechen, den' mein Verlangen ist zu grosz und ich weis nicht wan' die glückliche Stund' wird kom'en, ich wünschte Du kön'test mich sehen. Liebe, gute Schwester, schreib mir gleich und lasz mich nicht lange warten, den' mein Verlangen von Dir zu hören ist grosz.

Grüsze von mir und Gustaf Deinen l. Man' und Deine lieb. Kinder. Ich denke sie sind bei dieser Zeit schon grosz gewaschen.

Ich bleibe Deine gutte, treuherzige Schwester Catharina.

(Sig'd) CATHARINA KIRCHBERG.

D.

AUSTIN, T., 16*ten October* 1854.

LIEBE NICHTE:

Dein Brief ich mit grosser Freud' den 20. August erhalten und darin gelessen, dasz Ihr jetz' Alle wieder gesund sind, und wir sind
258 auch gesund. Verzeih' mir das' ich nicht gleich geschrieben habe. Dein Onkel Kirchberg war zu selber Zeit im Land' gewesen, 46 Meil' von Austin, und hat 6 Hundert and 40 Acker guttes Land gekauft u. 40 Acker den feinsten Marmor, in vershiedenen Farben, und dasz licht alles am *Petter* alles *Reber*. Onckel hat den schönsten Wasserfall und ein Dam', wo er niemahls kan' wegwaschen, den' er ist mit Stein gemacht, und da ist Onckel im'er beschäftigt. Er will das erste eine Mehl- und Seg'miehl aufstellen und 100 hn. Acker wollen wir diesen Winter brechen u. einfenssen laszen und ihm Frühjahr es pflanzen. Liebe, l. Mari', ich habe mir fest vorgenom'en gehabt Euch im Frühjahr besuchen und jetz' kan' es nicht sein, weil Dein Onckel jetz' viel von Haus ist, und so kön'en wir nicht beide abwessen' sein, den' wir haben ein' groszer Schob, wo viel Arbeit gethan werd, und daher musz ich zu Haus bleiben. Spätter, wen' wir Alles in Ortnung haben, dan'
259 kom'e ich doch. Liebe Nichte, Du schreibts mir, Du wüns't die Reis' wieder zu machen nach Frankreich, Du besser machtst eine Reisse zu mir, den' die Freude kön'te ich nicht beschreiben, die Du mir machen wurderst. Hast Du einmahl Lust mich besugen, dan' schreib mir. Ich hab' im'er die Gelegenheit in Austin, bei unsern Kaufleuten, da sie nehmen öfters ihre Frauen mit, und dan' hättes' Du eine gute Gesel'schaft, ich würde alles besorgen. Ist den keins von meinen viele' Nichten oder Neffen, die mich besuchen wollen? Liebe Nichte, die Neuigkeit die Du schreib't war mir angenehm zu hören, nur der gute Wilem Hoffmann, da brach mir mein Herz, und ich mus' laut weinen; den' das Tageslicht nicht sehen können, dasz ist hart, das ist sehr betrübt *vor* die gute Bone Tande Blänckman. Ich hoffe der liebe Gott macht i'm wieder die Genäszung geben. Lie. Nichte, Du sag't mir in Deinem Schreiben, das' Deine Tande Sau'der sehr from' geworden ist
seit *Wollentens* Todt, herzbrechen' war es *vor* mich wie ich es ge-
560 hört hab' in meiner lieben Schw. Wihliner Brief, das' die gute Schwe. Sauder ganz verwandt sprechen nach *Woll.* Todt. Zu selber Zeit bin ich u. Dein Onckel in die reformierth Kirche eingeschrieben worden, als Mitglied'. Wir haben ein herzguter Prediger, und ich

sagte von meiner Schwester u. wir beteten *vor* sie zu unserm him'*el*schen Vater, u. ich bet*te* Tag und Nacht *vor* sie, u. Er möchte ihr den guten Verstand wieder geben. Das war gewisz sehr hart *vor* den Onckel Sauder u. die Kinder. Ich habe den Glauben, das' meine Gebet*te* sind erhört worden, den' ich fühlte eine Erleichterung. Lie. Nichte, auch kan' ich Dir sagen, dasz meine Gedanken im'er bei Euch sind, u. das lasz' sich nicht ändern. Es ist einma*h*l so, im'er noch dasz Heimweh nach Euch. Liebe Nichte, jetz' will ich ein wenig schreiben wie ich jetz' wohne; es hat lange gewährt bis wir so weit gebra*gt* haben; unser Hausz ist jetz' ganz fertig, den' Onckel wol't' es alles *kunslidt* haben.

Meine Möbel habe ich von Neu *Org* nach der neu'ste' Mode,
261 es hat mich viel Geld gekostet diese Einrichtung in meinem
Hausz. Lach' mich nicht aus, dasz ich so schreibe, Du weis't ja, das' ich im'er geliebt habe schön zu wohnen, und dasz thu' ich jetz'. Du weis't ich war ein grosser Liebhaber von einem Garten u. jetz' habe ich wieder einen vor meinem *Phieszer*. Die Neuigkeit in Austin will ich nicht schreiben, ich schicke die Zeitung. Wir hatten keine Krankheit diesen Sommer in Austin, ich bin jetz' soweit zufrieden. Ich habe ein gutes Mächtigen, die meine Arbeit versehen kan' und mein Sohn Louis geht im'er in die Schule, ich hoffe er kan' bald die Brief' *vor* mich schreiben, er wo*h*lt' diesma*h*l schon schreiben. Er weis't nicht besser als er ist unser eigner Sohn, und son*ts* auch Niemand. Ist er einma*h*l grosz, so werden wir ihm sagen wie wir ihn angenommen haben, u. gewisz er macht uns viel Freud'. Meine Nachbaren Misses Knick sagt zu mir, sie reisz' im Frühjahr nach Philad., ihre Tante wohnt ja ne'st bei Euch,
Mis' Hintz, und wir sprechen im'er von Euch. Ich häckle alle-
261 weil ein Teite u. dasz werde ich Deiner Mutter zuschicken zum
Andenken, auf ihren Rocken-Stuhl, dan' vergeszt sie mich nicht, w*a*n' sie es vor die Augen hat. Onckel u. Franz u. ich grüszen Euch alle herzlich.

Liebe Schw. Christ., grüsze mir meine Schwe. u. Brüder ihre Familie'. Ich hoffe werde sie Alle bald sehen. Schreib' mir bald und auch Deine Nom'er von Deinem Hausz.

263 This is to certify that the above and foregoing depositions were taken by me in the absence of any other party than myself, and each witness respectively; that the answers were taken down by me in my own handwriting; and that said answers were read over and sworn to and subscribed by each witness, respectively, in my presence.

In witness whereof I have hereunto set my hand, and attached my official seal, this thirty-first day of December, A. D. 1870.

[L. S.] CHARLES H. T. COLLIS,
Commissioner for Texas in Philadelphia, Pa.

On the first day of May, 1871, the depositions of Louis Horst, Earnest Raven, and S. G. Haynie, were filed. Endorsed: "Rec'd from hands of Frank Brown, notary, and filed May 1, 1871—M. Hopkins, clerk," and endorsed, "Opened by order of court, July 8, 1871—M. Hopkins, clerk;" which said depositions are in words to wit:

264 *Depositions of S. G. Haynie, Louis Horst, and Ernest Raven.—Filed May 1, 1871.*

In chancery. U. S. circuit court, Austin, Texas.

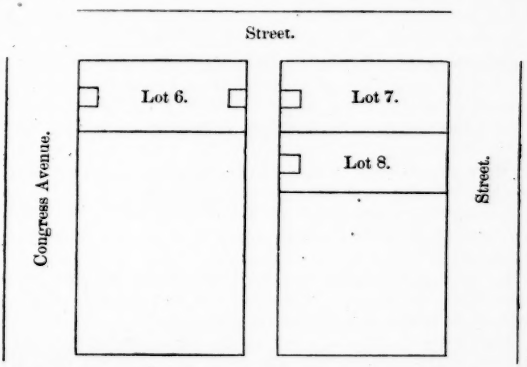
GROSHOLZ ET AL. *vs.* NEWMAN ET AL. } No. 53.

Interrogatories to Louis Horst, Earnest Raven, and S. G. Haynie, witnesses for complainants.

How long have you known John Wahrenberger, Gustavus Kirchberg, Frank Pressler, and Charles Weise? Give dates, near as you can recollect, of your becoming acquainted with each of them. State which of them are living and which dead.

Int. 2. Of what country are they natives? Where have they resided since you first knew them? State whether your acquaintance with each is casual or intimate, and, if either, which did you know intimately?

Int. 3. Where did Gustavus & Catherine Kirchberg reside from 1850 until their death? If you say in Austin, on lot' 6, 7, & 8, in block No. 111, state whether the following is a correct diagram of these
265 lots, to wit:



Int. 4. What character of house, if any, did Kirchberg's wife have on each of said lots?

Int. 5. What business did Kirchberg follow from the time you first knew him? Did he at any time change the character of his business? If so, about what time? What business did he follow just before he died? If you say he was at any time engaged in selling lager beer, where was it brewed, and where was it sold? On what lot was the brewery situated? At what time was the brewery built on the lot named?

Int. 6. Did lots 6, 7, & 8, in block 111, belong to Kirchberg and wife, or did they belong to some one else?

Int. 7. If you say their kitchen was on lot 7, and brewery on lot 8, state how long it was after he built his dwelling before his kitchen and brewery were built.

206 Int. 8. Did you ever hear Kirchberg say when, if ever, he purchased said lots 7 & 8? And if yes, for what purpose he purchased them?

Int. 9. If you say he purchased said lots 7 & 8 to make them a part of his homestead, state whether he used them for that purposed, and for how long.

Int. 10. Did you ever hear of any persons, during the life-time of Kirchberg and wife, claiming adverse title to them of said lots 7 & 8? If yes, state what character of claim was held or set up by such persons.

Int. 11. Did you ever hear either John Wahrenberger, Kirchberg, or his wife say anything about a claim Wahrenberger held on said lots 7 & 8? State whether, if any such claim was given or intended by Kirchberg to be an absolute deed or title to said lots, or was it given as a mortgage to secure the payment of some money due by Kirchberg to Wahrenberger.

267 Int. 12. If you say you were intimate with Wahrenberger, Kirchberg, and wife, state whether, during their life-time, you ever heard either of them, or any one else, say that said lots 7 & 8, or either of them, were the property of Wahrenberger. If yes, who?

Int. 13. State who occupied the buildings on lots 7 & 8 from the time Kirchberg first purchased them until Catherine Kirchberg's death, and who received the rents and profits.

Int. 14. Did you ever know Wahrenberger to receive or set up claims to any of the rents derived from the buildings on said lots 7 & 8 during the life-time of Catherine Kirchberg?

Int. 15. From your knowledge of the character of Jno. Wahrenberger was it likely that he would have permitted Kirchberg and wife to remain in possession, use as a homestead, and receive the rents and profits of lots 7 & 8, if he considered himself the absolute owner of said lots? State what was his character. Was he a prudent, cautious, money-

268 making man, or was he so liberal as to give to persons not related to him the use and enjoyment of his property, free of rent?

Int. 16. Was there any relationship existing between Jno. Wahrenburger and Kirchberg and wife, or either of them?

Int. 17. From your knowledge of Kirchberg and wife would either of them have occupied and built up on lots of John Wahrenberger, and used them as parts of their homestead, if they had supposed that he was holding the absolute title to such lots? State all you know that will throw light on this subject. Did you ever hear either of them say that Wahrenberger held the legal title to said lots?

Int. 18. State whether you ever heard Wahrenberger, Kirchberg, or his wife say anything about an absolute deed, on its face executed by Kirchberg on the 28th Nov., 1851? If so, what did he or she say were the objects of said deed?

269 Int. 19. Was Frank Pressler or Charles Weise well acquainted with Wahrenberger, Kirchberg, and wife?

Int. 20. How much ought lot 7 to have rented for each year—1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, and how much ought lot 8 to have rented for during each of said years?

Int. 21. What was the value of each of said lots on the 16th May, 1870, including the buildings?

Int. 22. What was the value, in specie, of lot 7 on 31 Dec., 1868? What was the value, in specie, of lot 8 in March, 1864?

Int. 23. What is the value, each, of lots 7 & 8 at the present time?

Int. 24. What was the value of lot 8, in specie, in January, 1868?

ROBARDS AND JACKSON,
Att'ys for Compl'tts.

Now comes the defendants, and object to all the interrogatories from 13th to 24th, inclusive, as leading, and so seeking to elicit parol proof of matter of which there is written evidence, and to elicit matter
270 wholly irrelevant; & in case the witnesses answer, they move to suppress the answer to all such leading and illegal interrogatories.

BOWERS & WALKER,
Att'ys for Def'ts.

Cross-interrogatories to Messrs. Horst, Raven, & Haynie.

X-int. 1. State in what month and in what year were the improvements first commenced on each of the lots asked about.

X-int. 2. When was Kirchberg's house first built, and when was his kitchen built, and when was the brewery built?

X-int. 3. Be sure, when you answer, not to give any hearsay talk about the deeds of trust and mortgages to Wahrenburger, as they are all in writing.

BOWERS & WALKER,
Sol's for Defendants.

271 GROSHOLZ ET AL. *vs.* NEWMAN ET AL. } Suit pending in chancery, U. S. circuit court, at Austin, Texas.

Answers of S. G. Haynie, Louis Horst, and E. Raven to interrogatories propounded in said cause, as follows, to wit:

Answers of Dr. S. G. Haynie.

In answer to direct interrogatory 1st, witness says: I have known John Wahrenberger during his life-time, from 1839 or 1840 to his death. I knew Gustavus Kirchberg from the time of his arrival in Austin to his death. He came here, I think, somewhere near the year 1850. I have known Frank Pressler since he came to Austin; cann't give the date. I cannot call to mind the person answering to the name of Weise. Wahrenberger and Kirchberg are dead; Pressler is living.

Ans. 2nd. They were all understood to be Germans. They resided at and near Austin, Texas. My acquaintance was not intimate nor casual. I saw the parties frequently. I knew them both very well, as also Mr. Pressler.

272 Ans. 3. From 1850 until their death they both resided at their homestead in Austin, being lots 6, 7, & 8, in block 111. The diagram here shown me is a correct representation of the homestead of Kirchberg and wife.

Ans. 4. There was a small frame house on the two rear lots, and a frame dwelling on the front lot, being lot 6. There was on the same lot, fronting on the avenue, a blacksmith's shop, afterwards turned into a lager-beer shop. This is my recollection.

Ans. 5th. When I first knew him he was a blacksmith. He did—I can't recollect when he changed his business to that of selling lager beer. He was retailing liquors of some sort at the date of his death, as I understand and believe; don't know where it was brewed. If he sold lager beer it was at his shop. I understood that he sold lager beer and other liquors, but do not know of my own knowledge.

73 I did not go into his avenue house while engaged in the business.

I only know from common report that he was engaged in the business; don't know when he had any brewery, if he had any at all; don't know.

Ans. 6th. I don't know. They were understood to belong to Kirchberg & wife.

Ans. 7. Don't know.

Ans. 8. No.

Ans. 9. Don't know.

Ans. 10. No; don't know.

Ans. 11. No; I know nothing at all about it.

Ans. 12. Don't recollect.

Ans. 13. Don't know.

Ans. 14. No.

Ans. 15. I have no opinion on this subject. I believe he was an honest, kind-hearted man; prudent and industrious.

Ans. 16. I don't know.

Ans. 17. I don't suppose anybody would do that. I never heard them say that Wahrenburger had any claim on the lots.

Ans. 18. Never heard anything about it.

Ans. 19. I presume Charles Pressler was. I may know Weise,
274 but cannot call him to mind. If the man alluded to is the German who lives near me, then I know him, and he was probably well known to Kirchberg and the other parties.

Ans. 20. I am not well enough acquainted with rents in that part of the city to answer the question properly.

Ans. 21. I suppose lot 7 to have been worth in May, 1870, about $500. I suppose lot 8 to have been worth the same.

Ans. 22. Don't know.

Ans. 23. I don't know what they are worth.

Ans. 24. Don't know.

Ans. 25. Cann't do it.

Ans. to x 2. Don't recollect.

Ans. to x 3. I don't do this.

S. G. HAYNIE.

Sworn to and subscribed before me this April 27th, 1871.

A. R. MORRIS, *Clerk*,
By FRANK BROWN,
Deputy Clerk.

275 Answers of the witness Louis Horst.

Ans. 1st. I knew John Wahrenberger from 1839 to his death. I knew Gustavus Kirchberg from 1845 or 1846 or 1847 to the day of his death. I have known Frank Pressler since about 15 years ago. I have know' Charles Weise for some 15 years. Wahrenberger and Kirchberg are dead. The others are still living.

Ans. 2. Kirchberg was from Prussia. Wahrenberger was from Switzerland. Frank Pressler, I think, was from Prussia; don't know positively; can't say where Weise was from. He is called a German. They have resided at and near Austin, Travis County. I have never been intimate with any of them; saw them frequently, and knew them very well.

Ans. 3. They resided on Congress avenue, in Austin. The diagram here shown me is a correct representation of the premises upon which they lived.

Ans. 4. They had a wooden house on each of said lots, and a
276 house on the avenue, built of stone and from timber.

Ans 5. He followed gunsmithing and blacksmithing; don't remember any change in his business; don't remember what business he followed just before he died; don't know anything about any brewery or lager beer carried on by Kirchberg.

Ans. 6. Don't know anything more than the fact that the parties lived there.

Ans. 7. Don't know.

Ans. 8. I heard him say that he bought them, but cannot say that he told me when or for what purpose.

Ans. 9. I cannot say.

Ans. 10. Don't know anything about it.

Ans. 11. Yes; can't answer the balance of this question. Kirchberg and wife both told me that they had given a mortgage to Wahrenberger on some of the lots, but I cannot give the numbers.

Ans. 12. No.

Ans. 13. Don't know.

Ans. 14. No.

Ans. 15. Can't say Wahrenberger was a liberal man. He
277 would not give anything away except to a friend. He was close in his business.

Ans. 16. No.

Ans. 17. Don't know. I have stated what I know.

Ans. 18. No.

Ans. 19. Yes; so far as I know.

Ans. 20. Don't know.

Ans. 21. Don't know.

Ans. 22. Don't know.

Ans. 23. Don't know.

Ans. 24. Don't know.

Ans. to x 1st. Don't know.

Ans. to x 2d. Don't know.

Ans. to x 3d. No answer.

LOUIS HORST.

Sworn and subscribed to before me this 29 April, 1871.

Answers of the witness, Earnest Raven.

Ans. 1. I knew John Wahrenberger from 1849 to his death. I knew Gustavus Kirchberg from 1849 to his death. I knew Frank Pressler since about 1852. I have known Charles Weise from about 1855
278 to the present time. Wahrenberger and Kirchberg are dead; the others are living at this time.

Ans. 2. They are all Germans except Wahrenberger, who was Swiss. At and near Austin; I have not known any of them very intimately.

Ans. 3. They resided on lot 6, in block 111, city of Austin. The diagram here shown me is a correct representation of the premises. Kirchberg used the building on lot 7 in said block as a kitchen; the improvements on lot 8 he rented out to different persons from time to time, and there was once a brewery there.

Ans. 4. Frame houses.

Ans. 5. He followed blacksmithing at first and afterwards went into the retail liquor business. This change, I think, when he went to keeping a bar-room, was about the year 1858, just before his death. I do not

recollect that he did anything except grocery keeping. He sold lager beer. It was brewed in Austin and sold at a building fronting on Congress Avenue, on lot No. 6. I don't know where the beer was
279 sold at that was brewed on lot No. 8. The brewery was situated on lot No. 8; don't know when brewery was built.

Ans. 6. Lot No. 6 I know belonged to Kirchberg and wife. I don't know whether lots 7 & 8 belonged to him or not, except from hearsay.

Ans. 7. Don't know.

Ans. 8. No.

Ans. 9. Can't say.

Ans. 10. No.

Ans. 11. No.

Ans. 12. No.

Ans. 13. Don't know who received the rents. The buildings were occupied by various persons, among whom I now remember Dr. Brown and Sittigast.

Ans 14. No.

Ans. 15. Can't say; he liked to make money and I thought that when anything passed from him he expected a consideration.

Ans. 16. None to my knowledge.

Ans. 17. Don't know. No.

Ans. 18. Never mentioned it in my hearing.

Ans. 19. In later years they were.

Ans. 20. From $50 to $60 a year. Lot 8 ought to have rented for $60 or $70 a year.

280 Ans. 21. Don't know.

Ans. 22. I think it would have brought $600, lot 8 about $600.

Ans. 23. Can't say.

Ans. 24. Can't say.

Ans. x 1st. Don't know.

Ans. x 2d. Don't know.

Ans. x 3. Don't want to.

E. RAVEN.

Sworn to and subscribed before me this May 1st, 1871.

FRANK BROWN,
Dep. Clk.

THE STATE OF TEXAS, *County of Travis:*

I, A. R. Morris, clerk of the district court within and for the county and State aforesaid, do hereby certify that the witnesses S. G. Haynie, Louis Horst, and E. Raven appeared before me, and being duly sworn made the foregoing answers to the accompanying interrogatories propounded to them; that they swore to the truth of said answers before me, and subscribed their names to the same in my presence at the dates indicated.

In witness whereof I hereunto place my official signature and seal of court this May 1st, 1871.

A. R. MORRIS, *Clerk.*
By FRANK BROWN,
Deputy Clerk.

281 And afterwards, to wit, on the 5th of January, A. D. 1872, the depositions of O. H. Cullen, Ja's Cawlfield, Ja's Cole, A. H. Barnes, J. M. Blackwell, E. J. Tipps, August Wahrman, A. J. Hamilton, Tho's E.

Sneed, and H. Sittegast, was filed endorsed, to wit: "Louis Grosholz et al. vs. Caroline Newman et al. 53 ch'y. Answers of O. H. Cullen, Ja's Cawlfield, Ja's Cole, A. H. Barnes, J. M. Blackwell, E. J. Tipps, August Wahrman, A. J. Hamilton, Tho's E. Sneed, and H. Sittegast," addressed to the clerk circuit court U. S. for the western district of Texas sitting at Austin, Texas.

(Endorsed:) Rec'd from the hands of James W. Smith, the notary before whom these depositions were taken and filed Jan'y 5, 1872.

M. HOPKINS, *Clerk.*

Opened by order of court Feb. 2d, 1872, and signed across the seal.

JAMES W. SMITH,
Not. Pub. Travis Co., Texas.

Which said depositions are in words, to wit:

282 *Deposition of O. H. Cullen & others.—Filed January* 5, 1872.

Depositions of O. H. Cullen, Ja's Caulfield, Ja's Cole, A. H. Barnes, J. M. Blackwell, E. J. Tipps, Auguste Wahrman, A. J. Hamilton, Tho's E. Sneed, and H. Sittegast, to wit:

In circuit court of the U. S. for the western district of Texas, in chancery, at Austin.

LOUIS GROSHOLZ & OTHERS
vs. } No. .
CAROLINE NEWMAN & OTHERS.

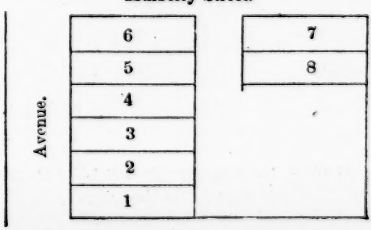
Interrogatories propounded by the defendants Caroline & A. B. Newman, Pressler, and Charles Weise to the witnesses O. H. Cullen, James Caulfield, James Cole, A. H. Barnes, J. M. Blackwell, E. Tipps, Watrmond, A. J. Hamilton, Tho's E. Sneed & H. Sittegast, who all reside in Travis County, Texas.

Interrogatories to the witnesses Cullen & Caulfield.

1st. Where do you reside? How long have you resided in and in the neighborhood of the city of Austin, in Travis County?

2nd. What was your occupation during the year' 1851, 1852 & 1853?

3rd. Do you know the three lots No. 6, 7, & 8 in block No. 111, in the said city of Austin? State if their relative position is shown in the plot annexed; if not, you will show, by your answer, how they are situated.



283 4th. State when, in what year & month if possible, and, if you know, when the first house, kitchen, or other tenement was built upon lots 7 & 8, and if you answer as to buildings upon lot No. 7 in said block, you will also state what means you have of identifying the date; give all facts and details showing or tending to show the date when the first building was erected upon said lots 7 & 8 in s'd block No. 111.

Int. 5, to Sittegast. State what you know of the erection upon lot No. 8 in said block of any buildings, and if you know when the first buildings were erected upon said lot and your means of knowing. State all facts showing the date of the first buildings upon lot No. 8, and why you can identify the time; what fact in your personal history or that of your family aids you in so fixing said dates. Answer fully.

Int. 6th, to Sittegast. State when the brewery, if at all, was first put in operation upon s'd premises on block No. 8; how long was the brewery run; by whom was the brewery owned and controlled, and you will state carefully your means of knowing?

284 To the witness' James Cole, A. H. Barnes, J. M. Blackwell, E Tipps, Wahrmond, A. J. Hamilton, & Tho's E. Sneed.

7. Did you know Gustavus & Catherine Kerchberg, or either of them, and if yea, how long did you know them?

8. State whether you ever had any conversations with either of the parties, Gustavus or Catherine, as to whether they were husband and wife, and whether they had ever been married, or whether they were living together without marriage. State fully all conversations and declarations of said parties Gustavus and Catherine you remember on the subject of the relations they had to each other, giving date of each conversation and circumstances of each, as fully as if particularly interrogated, and until you can say that you know nothing further on the subject?

9. State all you know from admissions or statement of said Gustavus & Catherine as to whether they ever were married.

BOWERS & WALKER,
Solicitors for Def'ts.

285 It is agreed by the parties that the testimony of the within-named witnesses may be taken on the direct & cross-interrogatories before any notary public or other officer authorized to take depositions under the laws, without commission, to be returned in accordance with State practice.

ROBARDS & JACKSON,
Att'ys for Compl'ts.

In circuit court U. S.

GROSHOLZ ET AL. *vs.* NEWMAN ET AL. } No. 53. In chancery.

Cross-interrogatories to Cullen and Caulfield.

Cross-int. 1st. If you assisted in erecting the kitchen on lot 7, in block 111, at whose instance, for whom did you do the work, and who paid you for it?

X-int. 2. By whom was it occupied, and for what purpose was it used from the date of its erection until the death of Catherine Kirchberg in 1862?

Cross-int. to Cittegast.

X-int'y 3. Are you the same Sittegast that gave testimony in this case when it was before tried?

X-int. 4. Did you not then say that you rented the house on lot 8 in block 111 for about 18 months of Gustavus Kirchberg; that you
286 settled with him for the rent, and that you knew no other person in the transaction. If you do not recol'ect what you then said, state what is your present recollection on that subject.

X-int'y 5. Did not Kirchberg pay for the building of the house? If not, who did? State all you remember on that subject.

X-int. 6. Who received the rents and profits on said house from the date of its erection until the death of Mrs. Catherine Kirchberg?

X-int. 7. Did Kirchberg ever keep and sell by retail beer in Austin? If so, where? In what building was the beer brewed?

X-int'y 8. How long have the defendants Frank Pressler & Charles Weise resided in the city of Austin?

X-int'y 9. Of what country are you, Ed. Tipps, Gustavus Kirchberg, John Wahrenberger, Caroline Newman, A. B. Newman, Frank Pressler, and Charles Weise, natives? State whether you and they were and are well acquainted with each other?

We object to any testimony relating to conversations of Kirchberg & wife with witnesses concerning the legal marriage or otherwise of Gustavus Kirchberg, and Catherine Kirchberg, but if over'uled,
287 we cross, as follows:

X-int. 10 to James Cole, A. H. Barnes and A. J. Hamilton. What were Gustavus Kirchberg's habits for four or five years before his death? If you say he was addicted to intemperate drinking of intoxicating liquors, how did he conduct himself during the time he was under the influence of intoxicating liquors?

X-int. 11. Did not said Gustavus & Catherine, from the time you first knew them to his death, live together as husband & wife? Did they not use and enjoy the same property? So far as outward appearances went, were they not to all intents and purposes husband and wife? State whether their living together as husband & wife was continuous, although he may have at times treated her improperly.

X-int'y 12. How did Catherine conduct herself as a housekeeper? State any fact or circumstance you may remember on that subject. Which of the two contributed most to their making of property and taking care of it when made?

X-int. *3rd.* State whether the possession, use, and enjoyment of
288 lot 6 & 7 & 8 in block 111, by Gustavus and Catherine, were continous from the date of their purchase until their respective deaths, or were they interrupted?

X-int. 14. Did you ever hear, until after the death of Mrs. Kirchberg, any one set up or claim adverse title to either lots 7 or 8, in block 111, as against Kirchberg and wife? If so, state who.

X-int. 15. Were you well acquainted with John Wahrenberger? State whether it is likely from your knowledge of his character that he would have permitted Kirchberg and wife to remain in possession of lot 7 & 8 for 8, 9, or 10 years, use and enjoy the rents, issues, & profits thereof without letting some of you know he claimed it as his property.

ROBARDS AND JACKSON,
Att'ys & Solicitors for Compl'ts.

Cross-int'y to Tho's E. Sneed.

X-int. 16. If you say anything relative to the marriage of Kirchberg & wife, state whether your information was not derived in professional confidence from Kirchberg.

X-int. 17. State whether Kirchberg did not continue to live with Catherine Kirchberg in every respect as husband and wife from
289 the date of his conversation with you until his death.

R. & J., *Att'ys, &c.*

In circuit court U. S. for the western district of Texas, in chancery, at Austin.

LOUIS GROSHOLZ & OTHERS
vs.
CAROLINE NEWMAN ET AL.

By virtue of the interrogatories hereto attached, and the agreement thereon endorsed, I caused the witnesses, O. H Cullen, James Caulfield, James Cole, A. H. Barnes, J. M. Blackwell, Ed. Tipps, August Wahrman, A. J. Hamilton, Tho's E. Sneed, and H. Sittegast, who being duly sworn, depose and answer as follows, to wit:

Answers of O. H. Cullen.

Ans. to int'y 1st. I reside in the city of Austin, Travis County, Texas, and have been residing in and in the neighborhood of the city of Austin nearly twenty-two years.

Ans. to int'y 2d. I was farming part of the year 1851, and commenced working at the carpenter's trade in the fall of the same year. I worked at the carpenter's trade the greater part of the year 1852, in the city of Austin, say from March to Christmas of that year. In 1853, I followed the same business out in the country.

290 Ans. to int'y 3d. I know the lots referred to in interrogatory No. 3. Their relative position is correctly shown in the plat annexed to said interrogatory 3rd, according to the map of the city of Austin.

Ans. to int'y 4th. The first house was built on lot No. 7, in block No. 111, sometime in the summer of 1852. I do not remember the exact month. I do not know when the first house was built on lot No. 8, in said block No. 111. The house above alluded to, as having been built on lot No. 7, in 1852, was built for a kitchen. My means of knowing the date of the erection of said kitchen are, that I assisted Mr. Caulfield to put it up in the summer of 1852, that being the only year that I worked at the carpenter's trade in the city of Austin, except what little I worked at it in the fall of 1851; and further, I came to the city of Austin in the year 1849, in the spring, and in August of the same year I went out on the frontier with a ranging company, and was out there a little over a year, coming home in the fall of 1850; and in the
291 spring and summer of 1851 I made a crop over the river, in what is now the Walsh farm; and in the fall, in October of the same year, my mother and sister departed this life; and after their death I came to Austin and worked at the carpenter's trade the balance of that fall, and from about March, 1852, to Christmas of the same year, and after that I worked in the country; I know that I assisted Mr. Caulfield to put up the house in the summer of 1852, that being the only summer I ever worked at the business in said city.

Answers of O. H. Cullen to cross-interrogatories.

Ans. to x-int'y. 1. I assisted to errect said house at the instance of James Caulfield, he having made the contract to build the same for G. Kirchberg; Mr. Caulfield paid me for my work on said house.

Ans. to cross-int. 2nd. The house was occupied from the time we finished it, as long as I remained in the city, as a kitchen by Kirchberg's family. I am not able to state for what purpose it was used after I left the city. I was about the city of Austin but very little until the fall of the year 1854, when I came back to the city; I cannot
292 speak as to occupancy of said house from 1852 until in 1860, at which time I was a clerk in the land-office, and had occasion to pass by the house almost daily. It was then used as a kitchen by Kirchberg's family. I know nothing of its occupancy in 1862.

O. H. CULLEN.

Subscribed & sworn to before me, Feb'y 7, 1871.

JAMES W. SMITH,
Notary Public of Travis Co., Texas.

Answers of J. M. Blackwell.

Ans. to 7 int'y. I knew Gustavus and Catherine Kirchberg. I became acquainted with them in A. D. 1850, and knew them well from that time until their death.

Ans. to 8th int'y. In 1856 or 1857 Gustavus Kirchberg came to me while I was acting justice of the peace and wanted me to divo'ce him from Catherine Kirchberg, and said that they never had been married and that they were living together without being married. Catherine Kirchberg never did say anything to me upon subject, and Gustavus Kirchberg never said anything more than as above stated to me. I know nothing further upon this subject.

293 Ans. to 9th int'y. I have already answered all that I know upon the subject in my answer to 8th interrogatory.

J. M. BLACKWELL.

Subscribed and sworn to before me on this the 8th day of February, A. D. 1871.

JAMES W. SMITH,
J. P. Travis Co., Texas.

Answers of August Wahrman.

Answer to 7th int'y. I knew Catherine and Gustavus Kirchberg from the 25th Jan., A. D. 1854, until their death.

Ans. to 8th int'y. I never heard them or either of them say anything about being married; nor have I ever had any conversation or conversations with them or either of them as to their marriage. In A. D. 1855, I heard Gustavus Kirchberg say that it was all a humbug to get married; that the parties could live together as well without being married as to be married.

Ans. to 9th interrogatory. In my answer to the 8th int'y I have stated all I know upon the subject.

AUGUST WAHRMAN.

Subscribed and sworn to before me on this the 9th day of February, 1871.

JAMES W. SMITH,
Notary Public of Travis County, Texas.

294 Answers of A. H. Barnes.

Answer to 7th int'y. I knew Gustavus and Catherine Kirchberg from A. D. 1850 until their death.

Answer to 8th int'y. I never had any conversations with them or either of them as to whether they were married.

Answer to 9th int'y. I have already answered this in my answer to 8th interrogatory.

Answer to x-int'y 10th. Gustavus Kirchberg was rather dissipated, but was generally quiet. I never saw him misbehave, but could frequently see that he was under the influence of liquor.

Ans. to x-int'y 11th. I was introduced to Catherine Kirchberg by Gustavus Kirchberg. He introduced her to me as his wife. They used and enjoyed the same property. They treated each other as husband & wife. They continued to live together as kindly and affectionately as man and wife could live together, when I was present; and ,so far as I could know, up to the time of his death I never knew him to mistreat her.

Ans. to x-int'y 12th. I think she was one of the wisest housekeepers I ever saw, and was very saving, economical, and did her own
295 work. They were both industrious and saving until he became dissipated. I can't say which contributed most to making or saving of the property. They both seemed to be industrious.

Answer to x-int'y 13th. The use and possession and enjoyment of lots Nos. 6 & 7, in block No. 111, was continuous from the time the improvements were put on them until their death. As to dates and when purchased I can't say. As to lot No. 8 I know nothing. I know nothing as to the possession of lot No. 8.

Answer to x-int'y 14th. I never did.

Answer to x-int'y 15th. I was well acquainted with John Wahrenberger. I understood that John Wahrenberger had a lien upon Kirchberg property for money loaned. Wahrenberger was a man that had very little to say about his business to any one unless he had business with him. He kept his business, as far as I know, pretty much to himself. The above is about as good an answer as I can make to this interrogatory. He said to me nothing about it; and can't say whether he would have permitted it or not.

A. H. BARNES.

Subscribed and sworn to before me on this the 9th day of February, A. D. 1871.

JAMES W. SMITH,
Notary Public of Travis Co., Texas.

296 Answers of Thomas E. Sneed, to interrogatories propounded to him, are as follows:

Ans. to int. 7. I was acquainted personally with Gustavus Kirchberg from a short time after his removal to Austin, Texas, until his death. I knew Catherine Kirchberg by sight for about the same period, though I had no personal acquaintance with her.

Answer to int. 8th. Said Gustavus told me that he was never married to said Catherine; that Catherine was the widow of his deceased brother, who died in Philadelphia, in Pennsylvania State; and that, after his brother's death, he took Catherine to support, in Philadelphia, and that, after a time, he and the said Catherine became intimate and, from that time, lived together and cohabited as husband and wife; and that they then moved to Austin, Texas. The above is the substance of what he told me with respect to the relation he sustained to Catherine, and he made that statement to me in the court-house in the city of Austin, Texas, in the year 1860 or 1861, as well as I can recollect the date of the conversation. I cannot now state all the conversa-
297 tion of Gustavus with me on the occasion referred to, there being nothing to impress it upon my memory. I can only recol'ect with distinctness what he said about not being married to Catherine. I do not now remember to have ever spoken to Catherine, and I know I never had any conversation with her on the subject of her relation to Gustavus. A short time after the above conversation with Gustavus I had another conversation with him about Catherine. In this last conversation he told me that, since he had previously talked with me, Catherine had materially changed her course of conduct towards him, and that he had concluded to give her another trial before he cast her off. I then asked him if he had ever told any other person besides myself that he had never been married to Catherine, and he answered that he had told but one other person, and my recollection is that he said that person was Mr. Edward Tipps, who, I believe, at one time lived with Gustavus. I remember, also, that he told me, in the first conversation alluded to, that the boy known by the name of "James Kirchberg,"
298 who was reputed to be the child of Gustavus and Catherine, was an orphan child who' they had picked up somewhere, and that he was the child of neither Gustavus nor Catherine.

Ans. to int. 9. I have already answered as fully as I can.

Ans. to cross-int'y 16. The conversation first referred to by me came up in this way: I was, at the time, an attorney-at-law, and in practice, and had been attorney for Gustavus in some litigation he had with some other persons, and was on familiar terms with him. On the occasion of the first conversation, Gustavus came to me and took me aside, and told me of some domestic troubles he had with Catherine, and finally said he wanted a divorce from her, and desired that I should obtain it for him. I do not now remember the particulars of his troubles with Catherine. With the view of getting the facts, I interrogated him, and among the first questions that I asked, was as to the time and *and* place of their marriage, and to that inquiry he answered substantially what I have stated in answer to direct int'y 8. There was nothing said about compensation then, or at any time afterwards. I advised
299 Gustavus that he could not get a divorce, and that none was required, and went into full explanation to him of the reasons. I never made any charge for that advice, and he never paid me anything. I have stated all the attendant circumstances of the communication to me by Gustavus, and the court can determine my competency as a witness.

Ans. to cross-int'y 17. They lived together *has* husband and wife up to the time of the death of one of them. I know nothing further.

THO'S E. SNEED.

Subscribed and sworn to before me on this the 13 February, A. D. 1871.

JAMES W. SMITH,
Notary Public, T. C., T'x.

Answers of H. Sittegast.

Ans. to 6. int'y. I don't know when the brewery was first put into operation, and don't know how long the brewery run. I know the brewery was in operation, and run by Gustavus Kirchberg and one Schneider. They, Kirchberg and Schneider, had charge of the brewery when I came first to Austin, but can't remember the year I first came to Austin.

Answers to cross-interrogatories.

300 X-int. 3rd. I am.

X-int. 4th. I did not make any such statement. My present recollection is that I made no such arrangement with Gustavus Kirchberg.

X-int. 5th. I put up the house on the lot with the understanding with Kirchberg that I could put a house upon the lot to live in, and when I moved out, the house was to belong to Kirchberg; no one paid me for building the house. I simply had the right to live in the house until I saw proper to move out, for building the same.

X-int. 6th. I paid no rent while I occupied it. Don't know who received the rents afterwards.

X-int. 7th. Kerchberg did sell beer by retail, in Austin, in a house on the corner of lot No. 6, in block No. 111, and the beer was brewed in the house I put upon the same lot.

X-int. 8. I don't know.

X-int. 9. I am a native Prussian, and don't know the nativity or nationality of the other. I have been acquainted with them for several years, but can't state the number of years or exact time.

H. SITTEGAST.

Subscribed and sworn to before me June 28th, 1871.

JAMES W. SMITH,
Notary Public of Travis Co., Texas.

301 Answer of Ed. Tipps.

Ans. to 7th int'y. I have known Gustavus and Catherine Kirchberg from some time in the fall of the year A. D. 1854, until their death.

Answer to 8th int'y. In A. D. 1855 or 1856, I had a conversation with Gustavus Kirchberg. He told me, in the conversation, that he and Catherine had never been married, and that they were living together without being married. At the time of the conversation he seemed to be dissatisfied with the conduct of Catherine, and he told me at the same time that he had consulted A. J. Hamilton for the purpose of parting from Catherine Kerchberg. I had a conversation with Catherine Kirchberg after the death of Gustavus, and in that conversation I told her that Gustavus had told me that she and he never had been married. She replied that they had been married in Philadelphia, and that she could prove it.

Answers to 9th int'y. I have already stated all I know upon the subject in my answer to 8th interrogatory.

ED. TIPPS.

Subscribed and sworn to before me on this the 9th day of February, A. D. 1871.

JAMES W. SMITH,
Notary Public of Travis Co., Texas.

302 Answers of James Caulfield.

Answer to 1st int'y. I have lived in the city of Austin since October, A. D. 1846.

Answer to 2nd int. I was a carpenter.

Answer to 3rd int'y. I am acquainted and know the lots referred to in this interrogatory, and the relative position of each is correctly shown by the plot annexed to the interrogatory.

Answer to 4th int'y. In the sum'er of A. D. 1852, I built, under a contract with Gustavus Kirchberg, the first tenement or building that was built on lot No. 7, in block No. 111, in the city of Austin, Travis County, Texas, which building was used by Kirchberg as a kitchen. I know the time of the building of the kitchen to be correct, from the fact that I know that it was the summer that O. H. Cullen worked for me, and from the fact I know it was the summer before my daughter Harriet married Mr. Daughter, which marriage took place in the latter part of the year, A. D. 1852.

Answer to x-int'y 1st. I built the kitchen under contract with Gustavus Kirchberg, who paid me for the same.

203 Ans. to x-int'y 2nd. I' was used as kitchen—built for that purpose by Gustavus Kirchberg—but can't state the length of time it was used for such purpose by him.

his
JAMES + CAULFIELD.
mark.

Subscribed & sworn to before me on this the 9th day of February, A. D. 1871.

JAMES W. SMITH,
Notary Public of Travis County, Texas.

Answers of James Cole.

Answer to 7th int'y. I knew Gustavus and Catherine Kirchberg from A. D 1849 or 1850 until their death.

Answer to 8th int'y. I never had any conversation with either of them about being married.

Answer to 9th int'y. I was introduced to Catherine Kirchberg by Gustavus Kirchberg. He introduced her to me as his wife. They treated each other as husband and wife.

Answer to x-int'y 10th. Gustavus Kirchberg drank intoxicating liquors at times; but never saw in such a condition but what he was competent to attend to his business.

Answer to x-int'y 11th. Gustavus and Catherine Kerchberg, from the time I first knew them until their death, lived together as husband and wife. As far as my knowledge extends, they used and enjoyed
304 the same property. They treated each other as husband and wife from the time I first knew them until the death of Gustavus Kerchberg. I never knew Gustavus to mistreat her in any way.

Answer to x-int'y 12th. She was one of the neatest housekeepers I ever saw. They were both industrious and economical, but can't say which contributed most to making property or taking care of it.

Answer to x-int'y 13th. I know that Gustavus & Catherine occupied lot No. 6 from the day of purchase from me until their death, & their possession was not interrupted, and I know nothing about the use and possession of lot' Nos. 7 & 8.

Answer to x-int'y 14th. I know nothing about lots 7 & 8.

Answer to x-int'y 15th. I was well acquainted with John Wahrenberger, (and in answer to 2d part of this interrogatory, says,) I think not.

JAMES COLE.

Subscribed and sworn to before me on the 10 of February, A. D. 1871.

JAMES W. SMITH,
Notary Public T. C., Texas.

Answers of A. J. Hamilton.

Answer to int'y 7th. I knew the parties; I cannot remember how long, but for several years during their residence in the city of Austin.

305 Ans. to int'y 8th. I have no recol'ection of ever having any conversation with either of the parties as to the fact of their being husband & wife. I have heard them refer to each other as husband and wife, and never otherwise that I remember. I may state, in this connection, that I do remember to have heard their relation as husband and wife questioned; by whom I do not remember, but by various persons, as matters of rumor. I do not think I ever heard it by either of the parties themselves.

Ans. to int'y 9th. I know nothing further upon the subject of the interrogatory.

Ans. to x-int'y 10th. So far as I know, he was a laborious mechanic, (blacksmith,) who was in the habit of drinking regularly every day, but not to such excess to unfit him for business, so far I have knowledge. When I have seen him drinking, he was fond of talking with his acquaintances upon various subjects, especially about polities and his business as a mechanic.

Ans. to x-11th. To this int. I answer yes; so far as I know.

Ans. to x int'y 12th. My knowledge of the said Catherine impressed me with the belief that she was an industrious and thrifty housekeeper. I cannot say which of the two contributed to make or take care of property.

306 Ans. to x-int'y 13th. During my knowledge of the parties they resided east of Congress avenue, in the city of Austin, near the old State Gazette (now State Journal) office. The number of block or lots I do not know. Their joint possession of this homestead was continuous while I knew , so far as I know. I do not now know when either of them died.

Ans. to x-int. 14th. I know nothing of any claim of adverse possession, either before or after the death of Mrs. Kerchberg.

Ans. to x-int.

Ans. to x-int. 15th. I was acquainted with John Wahrenberger. He was a practical, prudent, and safe business man, who was careful of his interest and property. I cannot undertake to say what he was likely to do or not to do in the case in question.

A. J. HAMILTON.

Subscribed and sworn to before me on this the 7th day of February A. D. 1871.

JAMES W. SMITH,
Notary Public of Travis County, Tex.

307 THE STATE OF TEXAS, *County of Travis:*

I, James W. Smith, a notary public for said county, duly commissioned & qualified, hereby certify that O. H. Cullen, James Cawlfield, James Cole, A. H. Barnes, J. M. Blackwell, Ed. Tipps, August Wahrman, A. J. Hamilton, Tho's E. Sneed, and H. Sittegast appeared before me and made the foregoing answers to the interrogatories hereto attached, who signed their respective answers at the dates thereunto affixed, in my presence, and sworn to the truth of the same before me.

Witness my hand and affix my official seal at office, in the city of Austin, this the 28th day of June, A. D. 1871.

[L. S.] JAMES W. SMITH,
Notary Public Travis Co., Texas.

Notarial fees, $14.00.

And afterwards the deposition of Henry Ginal was filed, indorsed thereon a waiver of objections as to form, which waiver is in words to wit:

308 Objections to the within deposition waived, except such as go to the relevancy, materiality, or substance of the testimony.

This 21st Decem., 1870.

BOWERS & WALKER,
HANCOCK & WEST,
For Def'ts.

Deposition of Henry Ginal.

LOUIS GROSHOLZ, CHRISTINA GROSHOLZ, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, Wilhelmina Eggert, Reuben A. Harwick, Amand' Harwick, Henry Stauffer, Emeline B. Stauffer, Mary Eisenbrown, Joshua D. Bietel, Charlotte Bietel, Francis Hauck, Charles B. Wolf, Elizabeth A. Kaemerer, Simon K. Gross, guardian of Emma Catherine Gross, (who is a minor,) Frederick Wolf, Penrosa F. Eisenbrown, Matilda Steinbacker, and William Eisenbrown, plaintiffs.

vs.

CAROLINE NEWMAN, A. B. NEWMAN, JOHN B. Costa, Frank Pressler, and Charles Weise, (and James Baker, if he comes within the jurisdiction of the court,) defendants.

} No. 53. In chancery.

In chancery in the circuit court of the United States for the western district of Texas, at Austin.

309 The said defendants, or Messrs. Bowers and Walker, their attorneys and solicitors, will take notice that five days after service upon them of a copy of the following interrogatories, the said plaintiffs will apply to the clerk of the circuit court of the United States for the western district of Texas, for a commission to take the deposition of Henry Ginal, who is a resident citizen of the city of Philadelphia, in the State of Pennsylvania, and a witness for the plaint-

iffs in the above-entitled cause, and whose answers to the said interrogatories will be read in evidence by the plaintiffs on the trial of said cause.

The defendants, or their attorneys or solicitors, can cross said interrogatories.

ROBARDS & JACKSON,
Sol's for Pl'ffs.

Interrogatories by plaintiffs to Henry Ginal.

1st. Were you or not ever acquainted with on' Gustavus Kirchberg? If yea, state where and when, as near as you can, you first became acquainted with him.

2nd. State whether the said Gustavus Kirchberg, when you first knew him, was a single and unmarried man, or a married man. If you state that on your first knowledge of him he was a single man,
310 state further whether he remained a single man as long as you knew him, or whether he married.

3rd. If you answer that he married, then state to whom he was married, and the time and place of the marriage as near as you can recollect.

4th. State your means of knowing of the fact of such marriage, and whether you were present at it and witnessed it or not; if present, state in what capacity, if any, you were present at it.

5th. If there was any record or entry of said marriage made, state where it was made and what has become of it; state where, if anywhere, such record or entry can now be found; and if not now to be found, state why not, to the best of your knowledge.

6th. If you have stestified to the said Gustavus Kirchberg having married any one, state whether or not you know the person to whom he was married previous to the marriage, and state how long you had known her, to the best of your recollection, and your means of knowing her.

7th. State how long after such marriage you had any knowledge of the said Gustavus and his wife; state where they lived after their
311 marriage, and whether they lived together as man & wife during your knowledge of them subsequent to their marriage.

8th. State when and where, as near as you recollect, you last saw said Gustavus Kirchberg and wife, and whether or not they were then still cohabiting together as man and wife; and state what became of them so far as you know.

9th. Do you know any of the plaintiffs to this suit? If so state which of them; and if they are in any way related to the said Gustavus Kirchberg or to his wife, state in what manner or degree.

ROBARDS AND JACKSON,
Sol's for Plaintiffs.

Cross-interrogatories to witness, Henry Ginal, propounded by the defendants.

Cross-int'y 1st. How old are you? Have you a family? If yea, what? Where do you reside, & what is your occupation? If no occupation, how are you supported? In giving residence, give city, ward, street, & No., and who else are inmates or residents of the same house.

X-int'y 2d. Where did you reside in the year 1838; where in year 1839; where for each year up to the present? What has been your occu-

pation (trade, business, or profession) in life; what was your
312 last occupation, if you have changed employment? Answer, also, what has been your employment from 1838?

X 3rd. When did you first know any of the Kirchberg family? How many of them have you known? Who of them? How many brothers had Gustavus Kirchberg? Did you know Wilhelm or William Kirchberg? If so, how long did you know him? When and where did W'm Kirchberg die? What family, if any, did he leave? Had Wilhelm or William Kirchberg ever married? If so, to whom, & did he leave a widow?

X 4th. Do you not know, or is it not your opinion, or have you not heard that said Wilhelm or William Kirchberg and the said Catherine intermarried? Is it not your information and belief that Wilhelm or William Kirchberg and said Catherine were married? How long did you know said Catherine? How many times was she married? What were the names of her several husbands? Where did she reside during the life-time of each husband? Answer all parts of this questions fully and without reference to any other answer.

X 5th. If you have testified to a marriage between Gustavus Kirchberg and said Catherine, you will then state when and where the said marriage was celebrated. Give the city, street, and number.
313 Where did you reside at the time? Where did Gustavus reside? Where did Catherine reside? Who were present at the marriage? Answer fully.

X 6th. Was such marriage of which you testify performed, or was the ceremony solemnized by a minister or priest of any religion? If yea, then state the name of such minister or priest, and the sect, denomination, or church of which he was a member. If said marriage was celebrated by a magistrate, then give the name and office of said magistrate. State, also, whether said minister or magistrate is living, and if so, give his residence.

Int. x 7th. State what was the law or custom of the country, at the time of said marriage, as to keeping records of marriage in any and what public office. Answer whether any such register or record of this marriage was made, and if so, where, by whom made, and what has become of said record, and when did you last see it? What has become of said public records, and state your means of knowing.

X-int. 8th. State who first suggested to you the necessity and importance of your testimony herein. Were any, and what documents or papers furnished you to refresh your memory? What means and by whom has your memory been excited to the extent of testify-
314 ing to the fact of intermarriage of said Gustavus & Catherine? Answer fully.

X-int. 9th. Have you not heard that said Catherine was the wife of W'm Kirchberg and was his widow, on William's death? Do you not know that after W'm Kirchberg's death, that Gustavus Kirchberg came to Texas to look after some claims of Wilhelm or William Kirchberg, against the government of Texas, for guns or other military stores furnished Texas in her struggle with Mexico? Do you not know that said Gustavus on his return from Texas to Phila. "took up" with said Catherine, his brother's widow, and lived with her without marriage, until they moved to Texas, they, however, passing themselves off with strangers as man and wife? Have you never heard of the facts asked of in this interrogatory, and do you not believe them to be true?

X-int. 10th. Do you not know or believe it to be true that Gustavus & Catherine Kirchberg never were married, and do you not know they

cohabited and lived together as man and wife without any legal or other marriage, and that while not in fact married they ordinarily and usually passed for man & wife, and that such was the relation said
315 parties sustained when they moved to Texas? And that only when excited by domestic trouble or otherwise would said parties, Gustavus & Catherine reveal their legal relations to each other? How, if otherwise, would said Catherine have made it a matter troubling her conscience that she and said Gustavus had lived together without intermarriage, and why, on approach of death, should she express sorrow at her long-continued illicit intercourse with said Gustavus?

X-int. 11. State every fact known to you showing or tending to show that said Catherine and Gustavus, while living together as husband and wife, had not in fact ever been married? Answer fully as to such matters, as if you had been particularly interrogated. State if you have so answered this interrogatory. State, also, who has dictated, in whole or in part, any of your answer, to any of the direct or cross-interrogatories. Who has been present, and what agent, attorney, or party to the suit is or has been present during any portion of your examination, or has gone over the case with you in order to assist you in making yours answers? Have you answered all parts of the cross-inter-
316 rogatories fully? I' not you *you* will so answer to this general interrogatory.

BOWERS & WALKER,
Sol' for Defendants, Caroline and
A. B. Newman, Costa, Pressler, and Weise.

We hereby waive the issuance of commission, and agree that answers to the direct and cross-interrogatories may be taken by any officer authorized to take depositions according to the laws of the State of Pennsylvania, and that they may be read as evidence in said case without objections except as to matters of substance.

BOWERS & WALKER,
Sol' for Def's, Newman, Newman, Costa, Pressler, and Weise.

317 The deposition of Henry Ginal, of the city of Philadelphia and State of Pennsylvania, a witness produced, sworn, and examined before Charles H. T. Collisa, notary public in and for the said city, duly authorized to take depositions, on the twenty-ninth day of July, A. D. 1870, at my office, No. 208 West Washington square, in said city, to be read in evidence on the trial of a certain suit in chancery now pending and undetermined in the circuit court of the United States for the western district of Texas, wherein Louis Grosholz and others are plaintiffs, and Caroline Newman and others are defendants, on the part and behalf of the said plaintiffs, (the said deposition being taken by said notary public under authority conferring power to take depositions, passed by act of assembly, of Pennsylvania, of August 10, 1864.)

318 HENRY GINAL, being first sworn to tell the truth, the whole truth, and nothing but the truth touching the matters inquired of in the interrogatories and cross-interrogatories hereto attached, says:

In answer to the first interrogatory: I was acquainted with Gustavus Kirchberg. I knew him first about thirty-three years ago, in Philadelphia, Pa. He had a gun-store in Third street, near Cherry.

In answer to the second interrogatory: He was a single man when I first knew him. He got married between the years 1838 & 1840.

In answer to the third interrogatory: He married Catherine Blaess, a widow, whose maiden name was Wolf. I forget exactly where they were married, whether in my house or some other house, but it was in the city of Philadelphia, and it was between 1838 and 1840.

In answer to the fourth interrogatory: At that time I was pastor of the German Evangelical congregation of Philadelphia, and was in the habit of performing one or two or more marriage ceremonies dur-
319 ing each week of my pastorship. Most of these marriages took place at my house, but sometimes I visited the houses of the parties at their request. I think Mr. Kirchberg applied to me to perform the marriage ceremony, but to this I cannot positively swear *to*. It was customary for the bridegroom to do so. At all events I know I did marry him to Catherine Blaess, about the years 1838 or 1840. I married them in my capacity as minister of the gospel, and according to the forms of the German Evangelical Church.

In answer to the fifth interrogatory: I always made a record of these marriages, and I have all the records in my possession from the years 1846 to 1856, (fifty-six.) In 1842 I resigned my pastorship here, and went to Wisconsin. In 1844 I was succeeded by the Rev'd Mr. Lerchen, to whom I handed all the marriage-records from the year 1836 to the year 1842.

The marriage of Gustavus Kirchberg to Catherine Blaess was entered upon these records in my own handwriting. The Rev'd Mr. Lerchen died in the year 1846, and these records have never since been
320 found. I have had occasion to sea'ch for them in investigating other cases, but never could find them. Mr. Lerchen was a single man, and left no family of any kind. He died while making a pleasure tour of Virginia. It was my custom to give the parties certificates of marriage. I presume I did so in the present case, and it ought to be in existence somewhere.

In answer to the sixth interrogatory: I knew Mrs. Blaess while her first husband was living. I knew her only by sight. I knew her husband to speak to. I had known Mrs. Blaess from the year 1836.

In answer to the seventh interrogatory: I know they lived together as man & wife in Philadelphia. She assumed his name. I do not know how long. I knew them after marriage, before they went to Texas. I do not know where they lived after marriage.

In answer to the eight' interrogatory: I think I last saw Mr. & Mrs. Kirchberg about two weeks after the' got married. I saw them in the street, and spoke to them. This was in Philadelphia, on Third
321 street. They were then, as far as I know, living together as man and wife. I do not, of my own knowledge, know what became of them, but have heard it said they went to Texas.

In answer to the ninth interrogatory: I know Louis Grosholz and Christiana Grosholz. Christiana is the sister of Mrs. Kirchberg. I know Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, Henry Stauffer, Emeline B. Stauffer, Mary Eisenbrown, Joshua D. Bietel, Francis Hauck, Charles B. Wolf, Simon K. Gross, Emand Catherine Gross, and Penrosa F. Eisenbrown. I do not think they are related to Mr. and Mrs. Kirchberg. I may know the other plaintiffs by sight, but I do not remember their names.

In answer to the first cross-interrogatory: I am sixty-seven years of age. I have a wife and four step-children. No children of my own. I reside now at No. 624 North 4th street, in this city. I am now a teacher

of languages. Was a chapl'in in the Army during part of the war. I don't just now know what ward my house is in, but it is the Eleventh or Twelfth ward. I vote at Gen. Ballier's house. Nobody lives in the same house with me except my step-daughter, who is a widow.

322 In answer to the second cross-interrogatory: In 1838 I resided in Cherry street, between Third and Fourth street', and here I lived from 1836 to 1841. Then I went to Wood street, between 4th & 5th, and remained there until 1844, when I went to Milwaukee, Wisconsin. There I had a congregation for two years, and returned to Philadelphia, in September, 1846, and went to reside in Callowhill street, below Fourth street, where I remained for a few months, and then moved to Fourth street, between Willow and Callowhill, where I remained until 1851. Then I moved to Fifth street, between Brown and Parrish st's, and remained there until 1856, when I went . Chicago, and became editor of a German newspaper. Returned to Philadelphia in 1858, and resided in Fourth street, at the corner of Willow street, where I remained about a year, and then moved to Coates street, near 13th street, and lived there till I went to the Army, in 1861. My wife remained at Coates street. Returned from the Army in November, 1862, and moved from Coates street to 622 North 4th street, where I lived until 1869, when I moved to No. 624 North 4th street, where

323 I now live. I have been a Lutheran minister from 1829 to 1835, in York County, Pennsylvania. From 1836 to 1844, minister of German Evangelical congregation in Philadelphia; two years minister in Milwaukee; from 1840 to 1856, minister in Philadelphia; two years editor in Chicago; and since then have been employed as teacher of modern and ancient languages, except while I was chaplain in the Army.

In answer to the third cross interrogatory: I first knew Gustavus Kirchberg and his brother about 1837; I only knew these two; don't know whether there were any other brothers; don't recollect whether the brother's name was Wilhelm or William. Don't know when or where this brother died, nor whether he left any family; nor whether he was ever married or left any widow.

In answer to the fourth cross-interrogatory: I do not know the baptismal name of the brother I married to Catherine. It was one of the two brothers. It may have been Wilhelm, or it may have been Gustavus. Mr. and Mrs. Grosholz could answer this. I knew Cath-

324 erine only slightly and for a short time prior to her marriage. I never knew of her having but two husbands. With her first husband I think she lived at corner of Fourth & Brown streets. Don't know where she resided with her second husband.

In answer to the fifth cross-interrogatory: I have answered this interrogatory as fully as is possible in my examination-in-chief.

In answer to the sixth cross-interrogatory: As I have before answered, I performed the marriage ceremony myself, in my capacity as minister of the German Evangelical congregation of Philadelphia.

In answer to the seventh cross-interrogatory: No record of the marriage was kept excepting as already testified to by me. It was not the custom in Philadelphia, at that time, to keep a record of marriages in any public office. It is the custom during the last few years.

In answer to the eight' cross-interrogatory: I was first told my testimony would be required about a year ago by a lawyer—I forget his name—and by Milton F. Wolf. No papers or documents, were shown to me. They simple asked about the marriage-record. My memory has not been excited in any manner.

325 In answer to the 9th x-interrogatory: I never heard Catherine was the wife or widow of William Kirchberg. I have never till this moment heard of any other of the matters inquired of in this interrogatory.

In answer to the tenth cross-interrogatory: I know nothing whatever of the fact mentioned in this interrogatory.

In answer to the eleventh cross-interrogatory: I only know that I married one of these two brothers. If he died and she took up with his brother I know nothing of it, and never heard of it till now; that is as full as I can make my answer. Nobody has dictated to me these answers; nobody has been present at the examination to-day, but myself and the commissioner; nobody has gone over the case with me in order to assist me in making my answers; I have answered all parts of the cross-interrogatories fully.

HENRY GINAL.

I do hereby certify that the foregoing deposition of Henry Ginal was read to said deponent by me, and was sworn to and signed by the deponent before me and in my presence, and that the said deposition was taken and reduced to writing by me on the 29th day of July, A. D. 1870, at Philadelphia.

Given under my hand and seal, this 29 day of July, A. D. 1870.

[L. S.] CHARLES H. T. COLLIS, *Notary Public.*

326 *Transcript from probate court Travis County.*

THE STATE OF TEXAS, *County of Travis:*

Be it remembered, that at a term of the probate court of Travis County, begun and held at the city of Austin, on Friday, October 1st 1872, the following proceedings were had by said court on said day, in the matter of the partition of the property of James, Mary, and Josephine Wahrenberger and Caroline Newman, to wit:

* * * * * * *

To the Hon. W. D. Price, judge of Travis County:

The commissioners James W. Smith, E. Higby, John H. Robinson, Joseph Harrell and Henry Steussy, appointed to make partition of the estate as prescribed in copy of decree aforesaid, in discharge of their duty under the decree of partition respectfully report * *

* * * * * * * *

And it further appearing, that the other property is as aforesaid of the value $4,743.75 *dollars* more than the share of said minors, and she, the said Caroline Newman, proposing to release and surrender all right to her full share upon said tract being set apart to her, and the commissioners believing the partition very advantageous to the minors, and satisfactory to said Caroline Newman and her said husband,

327 A. B. Newman, the' report the following partition to the said Caroline Newman as follows: * * * *

Lot No. 7, in block No. 111, 350.00.

* * * * * * * *

It is therefore considered, adjudged, and decreed by the court, that said report of said commissioners be, and the same is hereby ratified, confirmed, and in all things approved.

It is further considered, adjudged, and decreed by the court, that the title to the property by said report partitioned and set apart to the said Caroline Newman be, and the same is hereby divested out of said minors James, Mary, and Josephine Wahrenberger, and vested in her, the said Caroline Newman.

* * * * * * * *

THE STATE OF TEXAS, *County of Travis:*

I, A. R. Morris, clerk of the district court within and for the county and State aforesaid, do hereby certify the above and foregoing to be a true and correct extract from the minutes of the probate court of Travis County, held at the city of Austin on the 1st October, 1869, as the same now appears of record in my office. In witness whereof I hereunto place my hand and the seal of Travis district court this 2d Feb'ry, 1872.

A. R. MORRIS, *Clerk.*
By FRANK BROWN, *Deputy.*

328 (Translated copy.)

Translated copies of German letters attached to the depositions of Freund, Louis Grosholz, and others.

A.

AUSTIN, *June 3rd*, 1850.

DEAR SISTER: Do not think ill of me that I have not written long ago. Now I have a good opportunity by Mr. Massan. I hope my letter will find you all in good health. As regards us, we are also all well with us. Our affairs are good, and now we are building. We have a lot in the main street in Austin, and we will buy the adjoining one for a garden. Our dwelling will be finished in 4 weeks. The well is also dug and there is good water. The shop has also been commenced, so we are now busily engaged until we have everything in order. We have 2 cows, chickens & ducks; so that we have enough milk and eggs. The young cattle, horses, mules & hogs we have running on the prairie. I can say as long as we have been in Austin we have had good fortune; and yet I wish myself to be near my dear sisters, especially with the dear sister Christ'na, where I have oftentimes shed many, many a tear. I shall never in my life forget how good you were to me the last hour. I also have your whole family before my eyes always. I am also often
in dreams with you. It makes me sick. Neither am I as strong
329 as formerly. I now have a good servant who has just arrived from Germany. She is a good cook. She is a person like Linzweiller. I can wholly depend upon her. Also tell Wilhelmina that I received her letter, and that I therein see that business last winter was not good, and she writes that I shall write her full particulars as to what I want, so that she could attend to it all. But I will now postpone all until some other time, because we use a great deal of money now in building. It may also be that when we have everything finished that I may pay you a visit. If I did not have that hope I could hardly exist, if I do not see my sisters and *her* dear children any more. I also think often of my two brothers. Remember me to their wives & children. I would have written to you oftener, but my heart was too full; I could not. Dear sister, I beg of you to write me immediately if you are all well. I would feel much relieved to receive a few lines from you. The letter that Wilhelmina wrote was not written in German. Gustave cannot read it well, so I must let a lady friend read it for me; and from Caroline and her husband & children I have not received a letter yet.
I am also anxious to know if they are all well. Give them my
330 heartfelt remembrance; also Lottie's children, and all enquirers. Mr. Massan can explain all to you verbally how it is in Austin. He says he will now remain in Philadelphia. He was tired of travelling.

My best love from me & Gustavus to & your dear husband, and to the whole family. My Luis always speaks of his cousins Grosholz and Saunders. He would like to see them.

KATHERINE KIRCHBERG.

331 (Translated copy.)

B.

AUSTIN, *Nov.* 16, 1850.

DEAR SISTER: It appears you have entirely forgotten me. I hope Mr. Massan delivered the letter from me. He was with us and told us he wanted to see you himself and speak with you. You can imagine how much pleasure it gave me. I was busy making some shirts for myself, so I thought I would send you the sleeves. They are of no particular value, only for you to keep me in remembrance. I hope you wont think ill of me for sending you such a sombre remembrance. I hope these few lines will find you all well. As regards us, we are also all well, and we are living, since the 1st of August, in our own house. We have furnished it well; and the other buildings are also finished where Gustave has sett up the blacksmith and wagon shop, where he makes a good deal of money. It has cost us a good deal of money to get thus far. We also had a dry summer. Everything dried up. We did not get any potatoes or other vegetables. I often think back; but must be satisfied with thoughts. The oldest inhabitants of Texas say they have not experienced such a hot summer before. I could stand it.

332 Dear sister Christine, I beg of you to write me as soon as possible. I am so anxious to hear that you are all well, and the whole family, as also my two brothers. Remember me with love to them and family. Dear sister, I can assure you when we are separated by distance from our brothers and sisters so far we often think back, for there is not a day or night that passes that my thoughts are not with you, and your dear children are ever before my eyes. I must close. My heart is too full. I have forgotten the No. of your house. Please write it to me. I and Gustave send love to you.

I remain, your true sister,

KATHERINE KIRCHBERG.

Louis sends his regards to his cousins. He speaks of them often.

333 (Translated copy.)

C.

DEAR SISTER WILHILMINA: I will take advantage of this good opportunity. The lady that will deliver you these few lines is Miss Bien. She lives in New York, and she was on a visit to her sister in Austin this winter. We are neighbors. Col. Wood and Kirchberg are good friends; and so I am pleased that her sister will pay you a visit, and so you can always hear from me then. The families always visit each other and it will give me heartfelt pleasure for you to get a'quainted with them, and you can speak verbally with Miss Bean, for I am very proud of you, and gives me pleasure, when I have an opportunity, to send an acquaintance of mine to you. Dear Wilhelmina, do not think ill of me for doing it. The letter I wrote on the 6th of Nov. you have not answered; if you have not received it write and let me know, for I

wrote what you wished to know. I also gave Gov. Bell a few lines to deliver to you; he is now in Washington. I heard from him that he laid sick in bed some 4 weeks; he is better and will pay you a visit before his return to Austin. Dear sister, I hope my letter will
334 find you and your family in good health. As regards ourselves, we are, thank God, well. We also had a good winter, not much cold. We had only one day's snow and not much rain. We are improving our property daily. Gustave has plenty of work and is a good, industrious man. He is always at his work in the shop and you know that I do my share as well, for work we must if we wish to get ahead. Dear sister, I wish I could only have a talk with you, but my desires are too great and I do not know when the happy hour may come. I wish you could see me. Dear, good sister, write me directly and do not let me wait long, for my desire is great to hear from you. Love from me and Gustave to your dear husband and your dear children. I think they are by this time well grown.

I remain, your true-hearted sister,

KATHERINA KIRCHBERG.

(Translated copy.)

D.

AUSTIN, *Oct. 15th*, 1854.

DEAR NIECE: I received your letter on the 20th August with great joy and read therein that you are again all well, and we also are
335 all well. Excuse me that I did not answer directly. Your uncle Kirchberg was, at the time, in the county, 46 miles from Austin, and bought 640 acres of good land and 40 acres of the finest marble, in different colors, and it lays on the Perdenullis River. Uncle has a most beautiful water-fall and a dam that can never be washed away, for it is made of stone and it keeps uncle always busy there. He wishes soon to put up a flouring and saw mill. We want to break 100 acres this winter and put it under fence, and plant it in the spring. Dear Mary, I had fully determined to pay you a visit in the spring, but now it cannot be, because your uncle is much away from home, and we cannot both be absent, for we have a large shop where much work is done at, therefore I must stay at home. After a while, when we have everything in order, I will come any how. Dear niece, you write you would like to make another voyage to France. You had better make a voyage to me, for I could not describe the pleasure it would give me. If you have a desire to visit me, write and let me know. I always
336 have the opportunity in Austin, with our merchants, for they often take their wives with them, and then you would have good company. I would attend to everything. Is there none of my many nieces and nephews that wish to pay me a visit? Dear niece, the news that you wrote gave me pleasure to hear the same, only in regard the good William Hoffman; it most broke my heart, and I wept loudly; for not to be able to see day-light, that is hard, that is mournful, for the good Auntie Benkman. I hope the good Lord may restore him. Dear niece, you say in your letter that your Aunt Sauter has become very religious since Valentine's death. It was heartbreaking to me to hear, in my sister Wilhelmina's letter, that the good Sister Sauter talks irrational since Valentine's death. At the same time I and your uncle have joined the Reformed Church. We have a good hearted preacher, and I spoke of my sister and we prayed to our Heavenly

Father for her, and I pray day and night that he may restore her mind again. That was assuredly very hard for Uncle Sauter and the children. I have the belief that my prayers were heard, for I felt a relief. Dear niece, I can also tell you my thoughts are always with you and
337 that will not be altered; it is always that homesick feeling for you. Dear niece, now I will write you how I live. It was some time before we reached our present position. Our house is now fully completed, for uncle first wished to have everything cancelled. My furniture is from New York and the latest style. It cost me a great deal of money, this furnishing my house. Do not laugh at me for writing so, for you know I always loved to live well, and I am doing it now. You know I was a great lover of a garden and now I have one before my window. The news in Austin I will not write now; I send the papers. We had no sickness in Austin this summer; so far, I am satisfied. I have a good girl that attends to all the work, and my son Lewis goes to school. I hope he will soon write the letters for me. He wanted to write this time. He does not know any better but what he is our own son and no one else. When he is grown then I will tell him how we adopted him, and surely he gives us much joy. My neighbor, Mrs. Knick, says she will go to Philadelphia in the spring. Her aunt lives near you—Mrs. Hintz. We are always speaking of you.
338 I am now knitting a tidy and I will send it to your mother for a remembrance, to put on her rocking-chair, then she will not forget me when she has it before her eyes. Uncle Lewis and I send heartfelt love. Dear sister, give my love to my sisters, brothers, and families. I hope I will see them all soon. Write soon, and also the No. of your house.

Mrs. Kirchberg's Letters.

It is agreed, by consent, that the within is a substantial translation of the letters referred to.

ROBARDS AND JACKSON,
Sol's for Plaintiffs.
BOWENS AND WALKER,
Sol's f'r Def'ts.

And afterwards, to wit, on the day of February, A. D. 1872, the following entry of setting the cause down for hearing appears upon the chancery minutes, and on the 6th day of Feb., 1872, the following decree was entered:

339 FRIDAY, *Feb. 2d*, 1872.

LOUIS GROSHOLZ & OTHERS
vs.
CAROLINE NEWMAN & OTHERS. } No 53. In chancery.

On this day come the sol's of complainant and defendants and the case was set for hearing on the 6th inst.

TUESDAY, *February* 6, 1872.

LOUIS GROSHOLZ, CHARLES F. SAUTER, CAROLINE F. Sauter, Charles H. Eggert, Wilhelmina Eggert, Reuben A. Harwick, Amanda Harwick, Henry Stauffer, Emeline B. Stauffer, J. D. Beitel, Charles Beitel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kaemerer, and Simon K. Gross, guardian of Emma Catherine Gross, a minor, Penrosa F. Eisenbrown, Matilda Steinbacker, and William Eisenbrown, complainants,

vs.

CAROLINE NEWMAN, AND HER HUSBAND, A. B. Newman, in their own behalf, and as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, minors, under the age of twenty-one years, and heirs at law of John Wahrenberger, dec'd; John B. Costa, Frank Pressler, and Charles Weise, and James Baker, otherwise called James Kirchberg, defendants.

} No. 53. Chancery.

This cause came on to be heard upon the bill, answers & replication thereto, exhibits & proofs at this time, and was argued by the respective solicitors of the complainants and defendants, Mess. Robards & 340 Jackson appearing for the complainants, and C. S. Wash, for the defendants. And thereupon, upon the consideration thereof, it was ordered, adjudged, and decreed as follows, that the bill be dismissed at the cost of the complainants, that the defendants have and recover of and from the complainants all their costs in this behalf expended, to be taxed, and for which execution may issue as at law.

And thereupon counsel for complainants gave notice of appeal and prayed the court to name the amount of the bond to be given to secure the costs, and the bond was fixed at five hundred dollars.

Petition for appeal.—Allowed & filed Feb. 9, 1872.—M. HOPKINS.

In the circuit court of the United States for the western district of Texas, sitting in chancery at Austin.

LOUIS GROSHOLZ ET AL., PLAINTIFFS,
vs.
F. PRESSLER ET AL., DEFENDANTS.

} No. 53.

The plaintiffs in the above-entitled cause respectfully pray the said court to grant to them an appeal to the Supreme Court of the United States from the final judgement and decree in said cause, rendered by the said circuit court on the 8th day of February, A. D. 1872, being the day of the January term, 1872, of the said circuit court.

ROBARDS AND JACKSON,
Sol's for Plaintiffs.

341 *Bond for appeal.*

UNITED STATES OF AMERICA,
Western District Texas:

Circuit court of the United States, fifth circuit and western district of Texas, sitting at Austin, said district, in chancery.

JAMES GROSHOLZ, CHRISTIANA GROSHOLZ, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, and William Eggert, who are citizens of the State of Pennsylvania, Reuben A. Harwick and Amanda Harwick, Henry Stauffer and Emeline B. Stauffer, J. D. Beitel, Charlotte Beitel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kamerer, and Simon K. Gross, guardian of Emma Catherine Gross, a minor, citizens of the State of Pennsylvania, Penrose F. Eisenbrown, Matilda Steinbacker, citizens of the State of Pennsylvania, and William Eisenbrown, a citizen of the State of Maryland, complainants,

vs.

CAROLINE NEWMAN, AND HER HUSBAND, A. B. Newman, in their own behalf, and as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, minors, under the age of twenty-one years, and heirs at law of John Wahrenberger, deceased, John B. Costa, Frank Pressler, and Charles Weise, all of whom are citizens of the State of
342 Texas, residing in said western district of Texas, defendants.

No. 53.

Know all men by these presents, that we, Louis Grosholz, Christiana Grosholz, Charles F. Sauter, Caroline F. Sauter, Charles H. Eggert, and Wilhelmina Eggert, Reuben A. Harwick, and Amanda Harwick, Henry Stauffer and Emeline B. Stauffer, J. D. Beitel, Charlotte Beitel, Mary A. Eisenbrown, Francis Hauck, Frederick Wolf, Charles B. Wolf, Elizabeth A. Kamerer, and Simon K. Gross, guardian of Emma Catherine Gross, minor, Penrose F. Eisenbrown, Matilda Steinbacker, and William Eisenbrown, as principals, and W. L. Robards and A. M. Jackson as sureties, are held and firmly bound unto Caroline Newman and her husband, A. B. Newman, in their own b'half and as guardians of James Wahrenberger, Mary Wahrenberger, and Josephine Wahrenberger, minors, and heirs at law of John Wahrenberger, deceased; John B. Costa, Frank Pressler, and Charles Weise, in the sum of five hundred dollars to be paid to said Caroline Newman and her husband, A. B. Newman, James Wahrenberger, Mary Wahrenberger,
343 Josephine Wahrenberger, John B. Costa, Frank Pressler, and Charles Weise, or to their executors, administrators, or assigns, as of right they may be entitled to the same, to which payment well and truly to be made we bind ourselves, and each of us jointly and severally, and we and each of our heirs, executors, and administrators, firmly

by these presents; sealed with our seals, using scrolls for seals, and dated the 25th day of March, A. D. 1872.

The conditions of the above obligation is such that, whereas at *at* circuit court of the United States, in and for the western district of Texas, sitting in chancery at Austin, for the January term, A. D. 1872, in a suit pending in said court wherein the afor'named Louis Grosholz et al. were complainants, and the said Caroline Newman et al. were defendants, No. 53, on the chancery docket of said court a final decree was rendered on the sixth day of February, A. D. 1872, in favor of said defendants, Caroline Newman and others, against the said Louis Grosholz, and others, as by the record in said court appears; and

344 whereas the above-named Louis Grosholz, and his co-complainants hath applied for and obtained an appeal to the Supreme Court of the United States to reverse said decree rendered by said United States circuit court on said sixth day of February, 1872, in favor of said Caroline Newman and her co-defendants in said cause and against said Louis Grosholz, and his 'complain'ts:

Now therefore, if the above-named Louis Grosholz and his 'complainants as herein set forth shall prosecute their said appeal to effect, and shall answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LOUIS GROSHOLZ. [SEAL.]
CHRISTIANA GROSHOLZ. [SEAL.]
CHARLES F. SAUTER. [SEAL.]
CAROLINE F. SAUTER. [SEAL.]
CHARLES H. EGGERT. [SEAL.]
REUBEN A. HARWICK. [SEAL.]
AMANDA HARWICK. [SEAL.]
HENRY STAUFFER. [SEAL.]
EMELINE B. STAUFFER. [SEAL.]
J. D. BEITEL. [SEAL.]
MARY A. EISENBROWN. [SEAL.]
FRANCIS HAUCK. [SEAL.]
FREDERICK WOLF. [SEAL.]

345 ELIZABETH A. KAMERER. [SEAL.]
CHARLES B. WOLF. [SEAL.]
SIMON K. GROSS, [SEAL.]
Guardian of Emma Catherine Gross.
PENROSE F. EISENBROWN, [SEAL.]
MATILDA STEINBACKER, [SEAL.]
WILLIAM EISENBROWN, [SEAL.]
By W. L. ROBARDS AND [SEAL.]
A. M. JACKSON. [SEAL.]
Attorneys in fact and of record.
W. L. ROBARDS. [SEAL.]
A. M. JACKSON. [SEAL.]

The above bond is hereby approved.

T. H. DUVAL, *U. S. Judge.*

Test with seal of court this 20th day of March, 1872.

M. HOPKINS, *Clerk.*

346 *Bill of costs.*

LOUIS GROSHOLZ ET AL., *vs.* CAROLINE NEWMAN ET AL. } 53, chan'y.

1870.				
May	16.	Entry rules, filing bill and exhibits		30
	"	To filing & certif. bill and 7 exhibits, 25c.	2	00
	17.	" 5 writs of subpœna & certif. issuance, $1.15	5	75
	"	" 9 copies for service, at 75	6	75
		" Docketing cause, ent'g		15
July	4.	" Ent'g appearances of def'ts		75
Aug.	1.	" Filing & ent'g assent of compl't time to answer		40
Sept.	5.	" Fil'g cert'f. & ent'g docket & rules, 5 answers	2	75
Oct.	3.	" Fil'g certif. & ent'g docket & rules, replication		55
Dec.	2.	" Fili'g & certif. interrog'es of def'ts		25
	"	" Copy and commission	3	50
		Filing, &c., agree't as to testimony		25
	"	Filing & certif. int'g's of plff		25
		To copy & commission	4	25
Dec	21,	" fil'g depositions of Gfnal & int'g		25
	"	" filing depositions of Rev. W. R. Baker and order opn'g and indorsement		55
Jan'y	17, '71.	Fil'g & certif. depositions, order, & endorsements		55
Janu'y	5, '72.	fil'g & certif. order op'g & indorsement, depos's		55
	" "	Filing sundry papers		50
Feb	2, '72.	Ent'g order setting down for hearing		30
Feb.	6, '72.	Ent'g decree and orders	1	00
		Docket fee, taxing costs, &c	2	00
		Cost, copy, fil'g, &c		50
		Final record of process, plead'gs & decree	75	00
	9,	" Fil'g pet'n for appeal & order		25
	"	Drafting bond for appeal and testin &c	2	00
		Transcript of record for Sup. Court	155	25
		Costs of clerk		$267 15
		Commissioner's costs paid by def'd's	19 00	19 00
		Att'ys costs with 5 setts of depositions		32 50
		N. S. marshal service, 5 supon's, $2.00		10 00
		Taxed. M. Hopkins, clerk. Costs in full		$328 65

Received the above am't of costs in full from W. L. Robards, compl'ts attorneys.

April 15, 1872.

M. HOPKINS, *Clerk.*

347 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing three hundred and forty-five written pages contain a full, true, and correct transcript of the record of all the proceedings had in case No. 53, chancery, in this court, entitled Louis Grosholz and others vs. Catherine Newman and others, as they appear of file and record.

In testimony whereof I have hereunto set my hand and the impress of the seal of said court at Austin, this 10th day of April, A. D. 1872.

[SEAL.] M. HOPKINS, *Clerk.*

(Indorsement on cover:) No. 387. Louis Grosholz, C. Grosholz, C. F. Sauter et al., appellants, vs. Caroline Newman et. al. W. Texas. C. C. U. S. Filed 25th May, 1872.